APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

OT	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED		ON (ID): 20 December 2007
<u> 21</u>	CHON I. DACKON DATE FOR APPROVED	JURISDICTIONAL DETERMINATION	011 (02)
A.	REPORT COMPLETION DATE FOR ALL TO		
	~ -		n Wetland 1

DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2007-981-RC, Johnson Bayou Wetland 1.

B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2007-701-RC,	·		
	DACKCROUND INFORMATION:		_	

C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron Parish Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Long. 093.7305° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coordinates of site (lat/long in degree decimal format): Lat. 29.7690° Center coord	
	Universal Transverse Mercator: 15 429380.87 E, 3293407.001 (14 22 37)	

Name of nearest waterbody: Tributary of Johnson Bayou, 0.5 mile

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Johnson Bayou, 1.7 miles.

Name of watershed or Hydrologic Unit Code (HUC): 12040201, Sabine Lake

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

M Office (Desk) Determination. Date: 20DEC2007

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Areno "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Waters subject to the ebb and flow of the tide. Explain: Wetland is contigous to a tributary of Johnson Bayou.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): 1

TNWs, including territorial seas Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

linear feet: Non-wetland waters:

width (ft) and/or

acres.

Wetlands: Approximately 1 acres.

c. Limits (boundaries) of jurisdiction based on: Not Applicable. Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

Supporting documentation is presented in Section III.F.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1 TNW

Identify TNW: Johnson Bayou.

Summarize rationale supporting determination: The mouth of Johnson Bayou is connected to the Sabine Lake which is subject to the ebb and flow of the tide and presently used to transport interstate commerse. Johnson Bayou is not on the USACE Galveston District Navigable Waters List, however, there is data from TGLO and other oil spill repsonse and fishing recreations sites that indicate the Johnson Bayou is subject to the ebb and flow of the tide. Johnson Bayou is Navigable-infact and could be used by interstate or foreign travelers for recreation or other purposes, is could be used for industrial purposes by industries in interstate commerce, and is or could be used to take fish or shellfish sold in interstate or foreign commerce. Johnson Bayou is located approximatly 1.7 miles from the wetland. A tributary of Johnson Bayou is located 0.5 mile away from the wetland and has a hydrolic surface connection to the wetland. The ajdacent weltand is neighboring a tributary of Johnson Bayou which flows directly into Johnson Bayou.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Johnson Bayou is or could be used by interstate or foreign travelers for recreation or other purposes, is could be used for industrial purposes by industries in interstate commerce, and is or could be used to take fish or shellfish sold in interstate or foreign commerce. Johnson Bayou is located approximatly 1.7 miles from the wetland. A tributary of Johnson Bayou is located 0.5 mile away from the wetland and has a hydrolic surface connection to the wetland. The ajdacent weltand is neighboring a tributary of Johnson Bayou which flows directly into Johnson Bayou.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List
Drainage area: Pick List

Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West

	☐ Tributary flows directly into TNW. ☐ Tributary flows through Fig. 2 ist tributaries before entering TNW.
-	Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ : Tributary stream order, if known:
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Fick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pickapis Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick Eist. Characteristics: .
	Subsurface flow: Pick Eist. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Tributary has (check all that apply): the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
	☐ Discontinuous OHWM. ⁷ Explain: .
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Oil or scum line along shore objects Mean High Water Mark indicated by: Survey to available datum;

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	[] []	fine shell or debris physical markings tidal gauges other (list):	deposits (foreshore) /characteristics	physical mar	kings; nes/changes in vegeta	ation types.	
(iii)	Explain:		olor is clear, discolored	i, oily film; water	quality; general wate	ershed characteristic	cs, etc.).
	.						

		(iv) Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings:
		☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings:
;	2.	Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		(i) Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics: Subsurface flow: Pick List Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	.!	(ii) Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
		(iii) Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
	3.	Characteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

	,			
1.	TNWs and Adja	icent Wetlands.	Check all that apply	and provide size estimates in review area:
			width (ft), Or,	

Wetlands adjacent to TNWs: 1 acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Based on subsequent data from IR 1995 and IR 2004 aerial photos, which were taken at different time of the year of greater than 3 months, the tributary is a RPW that typically flows year round.
- Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: approximatly 1 acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

E.

See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify water body and summarize rationale supporting determination:

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
		vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTIC	ON IV: DATA SOURCES.
A. i		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: HUC 12040201, Sabine Lake. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Johnson Bayou, LA; 1:24,000. USDA Natural Resources Conservation Service Soil Survey. Citation: Johnson Bayou, LA. National wetlands inventory map(s). Cite name: Cameron Parish, LA. State/Local wetland inventory map(s): FEMA/FIRM maps: 2251940550; dated 04 May 1992. 100-year Floodplain Elevation is: 14 (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charles (Name & Date): 1995 & 2004 Infrared or Charl
		Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: A desk review was completed on 20 December 2007 that included the collection and investigation of 1995 & 2004 infrared (IR) aerial photos, National Wetland Inventory Map (NWI), the Johnson Bayou USGS topographical map, and the applicant's submitted information. The IR aerial photographs

indicated that the project area contains cooler signatures which can be indicative of hydrology. The applicants data sheets confirm areas that meet the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual, however it is of the USACE's opinion that the wetlands extend outside the wetlands as listed in the delineation provided by the consultant. The Soil Survey and NWI Map indicate a hydrologic surface connection from the wetlands to Johnson Bayou, aTNW, via a tributary which flows directly into Johnson Bayou. The USGS topographic map also indicates that the project site contain waters of the United States, including neighboring wetlands to the tributary. The FEMA floodplain map indicates that the site is located within the 100-year flood plain of a water of the United States, specifically Johnson Bayou. The tributary of Johnson Bayou is the nearest water feature located 0.5 mile away. The subject wetlands are located approximately 1.7 miles East of Johnson Bayou, a TNW.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12/17/07
B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, William Ahern, SWG-2007-1487
C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: TX County/parish/borough: Matagorda City: Sargent Center coordinates of site (lat/long in degree decimal format): Lat. ° I, Long. ° II. Universal Transverse Mercator: (NAD 27) 15 243197E 3186093N Name of nearest waterbody: Dead Caney Lake Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: GIWW Name of watershed or Hydrologic Unit Code (HUC): 12090402 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 12/17/07 Field Determination. Date(s):
SECTION II: SUMMARY OF FINDINGS A. RHA SECTION 10 DETERMINATION OF JURISDICTION.
There are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
B. CWA SECTION 404 DETERMINATION OF JURISDICTION.
There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: 46 linear feet: width (ft) and/or acres. Wetlands: acres.
c. Limits (houndaries) of jurisdiction based on: Petablish all to the control of

Elevation of established OHWM (if known): 2' from bottom.

2. Non-regulated waters/wetlands (check if applicable):3

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain:

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: GIWW.

Summarize rationale supporting determination: Waters subject to ebb and flow of tide.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": N/A.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries, Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(D)	Tributary is: Natural Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick Eist.
-		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
::		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): The presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
		☐ Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; uvegetation lines/changes in vegetation types.
(iii)	Cha	mical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Third.

	(iv)		Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List Surface flow is: Pick List
			Characteristics: Subsurface flow: Pick List Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
		Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.		All ·	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

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For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 46 linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flow seasonally:

	÷	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Nor	n-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Pro	vide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	We	tlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is
		seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Pro	vide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	We	tlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Pro	vide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	We	tlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Pro	vide estimates for jurisdictional wetlands in the review area: acres.
7.		poundments of jurisdictional waters. 9 a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC B B B	GRA CH V whice from whice Inter	TED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY WATERS (CHECK ALL THAT APPLY): 10 the are or could be used by interstate or foreign travelers for recreational or other purposes. It which fish or shellfish are or could be taken and sold in interstate or foreign commerce. It has a concluded by the could be used for industrial purposes by industries in interstate commerce. It is a concluded waters. Explain: The factors. Explain:
Ide	ntify	water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	wide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
		wide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	SUPI	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1 mi Sargent. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s):
		FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION
A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12/20/07

В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CE-SWG, George Bailey, SWG-2007-1027
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State:TX County/parish/borough: Brazoria City: Brazoria Center coordinates of site (lat/long in degree decimal format): Lat. Long. Universal Transverse Mercator: 15 247921E 3210064N Name of nearest waterbody: San Bernard River
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: San Bernard River Name of watershed or Hydrologic Unit Code (HUC): 12090401 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 12/21/07 Field Determination. Date(s):
<u>SE(</u> A.]	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The area	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain: On USACE Galveston District's Navigable waters list.
	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.01 acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters. Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: San Bernard River.

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": N/A.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i)	General Area Conditions:
	Watershed size: Pick List
	Drainage area: Pick List
	Average annual rainfall; inches
	Average annual snowfall: inches
(ii)	Physical Characteristics:
()	(a) Relationship with TNW:
	Tributary flows directly into TNW.
	Tributary flows through Pick List tributaries before entering TNW.
	into daily now the organization and the cheering 114 w.
	Project waters are Pick List river miles from TNW.
	Project waters are Pick List river miles from RPW.
	Project waters are Pick List aerial (straight) miles from TNW.
	Project waters are Pick List aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain:
	TI CO O COMPANY
	Identify flow route to TNW ⁵ :
	Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(0)	Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
٠		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick Jist. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
Į		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

		(iv)	Bio	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
	2.	Cha	aract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		(i)		ysical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
			(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
				Surface flow is: Pick-List Characteristics:
			-	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
			(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
·			(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
		(ii)	Cha	emical Characteristics: bracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: bracterize titics; etc.). Explain: chify specific pollutants, if known:
		(iii	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
	3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, 0.01 acres. Wetlands adjacent to TNWs: acres.				
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:				

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC SUC SUC SUC SUC SUC SUC SUC SUC SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	factoriudge in the second seco	vide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fir	ride acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SE	CTIO	N IV: DATA SOURCES.
A.		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data.
		☐ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Aerial (Name & Date): or ☐ Other (Name & Date):
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

for 8

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12/20/07

В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, Jimmy H. Thompson, SWG-2007-1310
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State:TX County/parish/borough: Brazoria City: Clute
	State:TX County/parish/borough: Brazoria City: Clute Center coordinates of site (lat/long in degree decimal format): Lat. ° N. Long. ° W.
	Universal Transverse Mercator: (NAD 27) 15 267340E 3214435N
	Name of nearest waterbody: Oyster Creek
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Oyster Creek
	Name of watershed or Hydrologic Unit Code (HUC): 12040205
	Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
	Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a
	different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
	Office (Desk) Determination. Date: 1/22/08
	Field Determination. Date(s):
SEC	CTION II: SUMMARY OF FINDINGS
A. :	RHA SECTION 10 DETERMINATION OF JURISDICTION.
The	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review
area	L [Required]
	Waters subject to the ebb and flow of the tide.
	Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce
	Explain: On USACE Galveston District's Navigable waters list.
_	CHILL CECTION AND TOTAL
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S.
	a. Indicate presence of waters of U.S. in review area (check all that apply): 1
	TNWs, including territorial seas
	Wetlands adjacent to TNWs
	Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs
	Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
	Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area:
	Non-wetland waters: 103 linear feet: width (ft) and/or acres.
	Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters.
	Elevation of established OHWM (if known): 1' from bottom.
	Exercision of established off with (it known). I moundound.
	2. Non-regulated waters/wetlands (check if applicable): ³
	Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional

Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Oyster Creek.

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": N/A.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: Relationship with TNW: Tributary flows directly into TNW. ☐ Tributary flows through Pick List tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Oil or scum line along shore objects In shell or debris deposits (foreshore) Physical markings/characteristics In tidal gauges Other (list): Mean High Water Mark indicated by: Survey to available datum; Physical markings; Vegetation lines/changes in vegetation types.
(iii)	Char	mical Characteristics: acterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Bio	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Ch	aract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics: .
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: tify specific pollutants, if known:
	(iii)	Biol	ogical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All v	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List roximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.

	TERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL AT APPLY):
1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 103 linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.						
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):							
	facto judg	ride acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.						
	Prova fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.						
SEC	CTIO	N IV: DATA SOURCES.						
A. :	and 🔀	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:						
		☐ USGS NHD data. ☑ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Aerial (Name & Date):						
		or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):						

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORM	$[\mathbf{A}']$	TIO	IN
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A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 December 2007

DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2007-981-RC, Johnson Bayou Wetland 2. PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron Parish City: 4 miles west of Johnson Bayou Center coordinates of site (lat/long in degree decimal format): Lat. 29.7704° N. Long. 093.7305° N. Universal Transverse Mercator: 15 429384 E, 3293573N (NAD 83) Name of nearest waterbody: Tributary of Johnson Bayou, 0.5 mile Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Johnson Bayou, 1.6 miles. Name of watershed or Hydrologic Unit Code (HUC): 12040201, Sabine Lake Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Field Determination. Date(s): Office (Desk) Determination. Date: 20DEC2007 SECTION II: SUMMARY OF FINDINGS A. RHA SECTION 10 DETERMINATION OF JURISDICTION. There Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: Wetland is contigous to a tributary of Johnson Bayou. B. CWA SECTION 404 DETERMINATION OF JURISDICTION. There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required] 1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): 1 TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters2 (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: Approximately 1 acres. c. Limits (boundaries) of jurisdiction based on: Not Applicable. Elevation of established OHWM (if known): Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Johnson Bayou.

Summarize rationale supporting determination: The mouth of Johnson Bayou is connected to the Sabine Lake which is subject to the ebb and flow of the tide and presently used to transport interstate commerce. Johnson Bayou is not on the USACE Galveston District Navigable Waters List, however, there is data from TGLO and other oil spill repsonse and fishing recreations sites that indicate the Johnson Bayou is subject to the ebb and flow of the tide. Johnson Bayou is navigavle-in-fact or could be used by interstate or foreign travelers for recreation or other purposes, is could be used for industrial purposes by industries in interstate commerce, and is or could be used to take fish or shellfish sold in interstate or foreign commerce. Johnson Bayou is located approximatly 1.6 miles from the wetland. A tributary of Johnson Bayou is located 0.5 mile away from the wetland and has a hydrolic surface connection to the wetland. The ajdacent weltand is neighboring a tributary of Johnson Bayou which flows directly into Johnson Bayou.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Johnson Bayou is or could be used by interstate or foreign travelers for recreation or other purposes, is could be used for industrial purposes by industries in interstate commerce, and is or could be used to take fish or shellfish sold in interstate or foreign commerce. Johnson Bayou is located approximatly 1.6 miles from the wetland. A tributary of Johnson Bayou is located 0.5 mile away from the wetland and has a hydrolic surface connection to the wetland. The aidacent weltand is neighboring a tributary of Johnson Bayou which flows directly into Johnson Bayou.

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions:

Watershed size: Pick List Drainage area:

Pick List Average annual rainfall: Average annual snowfall:

inches inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

	☐ Tributary flows directly into TNW. ☐ Tributary flows through Pick Eist tributaries before entering TNW.						
	Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:						
	Identify flow route to TNW ⁵ : Tributary stream order, if known:						
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:						
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Fick Dist.						
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:						
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: RickFist Tributary gradient (approximate average slope): %						
(c) Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:							
	Surface flow is: Pick List. Characteristics: .						
	Subsurface flow: PickList. Explain findings: Dye (or other) test performed:						
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour sediment deposition multiple observed or predicted flow events abrupt change in plant community Discontinuous OHWM. Explain:						
	·						
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Oil or scum line along shore objects Mean High Water Mark indicated by: survey to available datum;						

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list):	 □ physical markings; □ vegetation lines/changes in vegetation types.
(iii) Chemical Characteristics: Characterize tributary (e.g., water color is clear, discolored Explain: Identify specific pollutants, if known:	, oily film; water quality; general watershed characteristics, etc.).

	(iv)	Biol	ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics:
		LI	Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: PickUsst Characteristics: .
			Subsurface flow: Pick List. Explain findings:
		(c)	Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: artify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: EckList proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adj	acent Wetlands.	Check all that appl	y and provide size estimates in review area:	
	₩ TNWs:	linear feet	width (ft), Or,	acres.	

Wetlands adjacent to TNWs: 1 acres.

2. RPWs that flow directly or indirectly into TNWs.

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Based on subsequent data from IR 1995 and IR 2004 aerial photos, which were taken at different time of the year of greater than 3 months, the tributary is a RPW that typically flows year round.

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: approximatly 1 acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
,	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify water body and summarize rationale supporting determination:

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	wide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
		vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SE	CTIC	ON IV: DATA SOURCES.
Α.		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report.
		Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: HUC 12040201, Sabine Lake. ☐ USGS NHD data. ☐ USGS 8 and 12 digit HUC maps.
		U.S. Geological Survey map(s). Cite scale & quad name: Johnson Bayou, LA; 1:24,000. USDA Natural Resources Conservation Service Soil Survey. Citation: Johnson Bayou, LA. National wetlands inventory map(s). Cite name: Cameron Parish, LA. State/Local wetland inventory map(s): FEMA/FIRM maps: 2251940550; dated 04 May 1992. 100-year Floodplain Elevation is: 14 (National Geodectic Vertical Datum of 1929) Photographs: ☒ Aerial (Name & Date): 1995 & 2004 Infrared. or ☒ Other (Name & Date):
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: A desk review was completed on 20 December 2007 that included the collection and investigation of 1995 & 2004 Infrared (IR) aerial photos, National Wetland Inventory Map (NWI), the Johnson Bayou USGS topographical map, and the applicant's submitted information. The IR aerial photographs

indicated that the project area contains cooler signatures which can be indicative of hydrology. The applicants data sheets confirm areas that meet the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual, however it is of the USACE's opinion that the wetlands extend outside the wetlands as listed in the delineation provided by the consultant. The Soil Survey and NWI Map indicate a hydrologic surface connection from the wetlands to Johnson Bayou, aTNW, via a tributary which flows directly into Johnson Bayou. The USGS topographic map also indicates that the project site contain waters of the United States, including neighboring wetlands to the tributary. The FEMA floodplain map indicates that the site is located within the 100-year flood plain of a water of the United States, specifically Johnson Bayou. The tributary of Johnson Bayou is the nearest water feature located 0.5 mile away. The subject wetlands are located approximately 1.6 miles East of Johnson Bayou, a TNW.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

- A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 December 2007
- DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG, SWG-2007-981-RC, Johnson Bayou Wetland 3.

C.	PROJECT	LOCATION	AND BACKGROUND	INFORMATION:
·	INCORCI	LUCATION	AND DAURUROUND	HNEUKINA HUJIN:

State: Texas

County/parish/borough: Cameron Parish

City: 4 miles west of Johnson Bayou

Center coordinates of site (lat/long in degree decimal format): Lat. 29.7704° N. Long. 093.7256° M.

Universal Transverse Mercator: 15 42958.60 E, 3293563.21N (NAD 83)

Name of nearest waterbody: Tributary of Johnson Bayou, 0.8 mile

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Johnson Bayou, 1.9 miles,

Name of watershed or Hydrologic Unit Code (HUC): 12040201. Sabine Lake

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 20DEC2007

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: Wetland is contigous to a tributary of Johnson Bayou.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

		_			
a .	Indicate presence	of waters	of U.S. in review	area (check all that ar	ınlv): '

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters:

linear feet: width (ft) and/or acres.

Wetlands: Approximately 1 acres.

c. Limits (boundaries) of jurisdiction based on: Not Applicable

Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Johnson Bayou.

Summarize rationale supporting determination: The mouth of Johnson Bayou is connected to the Sabine Lake which is subject to the ebb and flow of the tide and presently used to transport interstate commerce. Johnson Bayou is not on the USACE Galveston District Navigable Waters List, however, there is data from TGLO and other oil spill repsonse and fishing recreations sites that indicate the Johnson Bayou is subject to the ebb and flow of the tide. Johnson Bayou is navigable-in-fact and could be used by interstate or foreign travelers for recreation or other purposes, is could be used for industrial purposes by industries in interstate commerce, and is or could be used to take fish or shellfish sold in interstate or foreign commerce. Johnson Bayou is located approximatly 1.9 miles from the wetland. A tributary of Johnson Bayou is located 0.8 mile away from the wetland and has a hydrolic surface connection to the wetland. The ajdacent weltand is neighboring a tributary of Johnson Bayou which flows directly into Johnson Bayou.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Johnson Bayou is or could be used by interstate or foreign travelers for recreation or other purposes, is could be used for industrial purposes by industries in interstate commerce, and is or could be used to take fish or shellfish sold in interstate or foreign commerce. Johnson Bayou is located approximatly 1.9 miles from the wetland. A tributary of Johnson Bayou is located 0.8 mile away from the wetland and has a hydrolic surface connection to the wetland. The ajdacent weltand is neighboring a tributary of Johnson Bayou which flows directly into Johnson Bayou.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List
Drainage area: Pick List

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

	☐ Tributary flows directly into TNW. ☐ Tributary flows through Pick List tributaries before entering TNW.
	Project waters are Pick List river miles from TNW. Project waters are Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ : Tributary stream order, if known:
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
٠	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Fick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick Eist. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects Mean High Water Mark indicated by: survey to available datum;

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

fine shell or debris deposits (foreshore)	physical markings;
physical markings/characteristics	vegetation lines/changes in vegetation types.
Lidal gauges	
other (list):	
(iii) Chemical Characteristics:	
	, oily film; water quality; general watershed characteristics, etc.).
Explain:	, only film, water quanty, general watershed characteristics, etc.).
Identify specific pollutants, if known:	
y -p p	

	. (Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2	2. (Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i) Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics: .
		Subsurface flow: Pick Eist. Explain findings: Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershe characteristics; etc.). Explain: Identify specific pollutants, if known:
		iii) Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3	i. (Characteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: <u>Pick Eist</u> Approximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands	Check all that apply and provide size esting	nates in review area:
	TNWs: linear feet	width (ft), Or, acres.	
	Wetlands adjacent to TNWs:	l acres.	

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Based on subsequent data from IR 1995 and IR 2004 aerial photos, which were taken at different time of the year of greater than 3 months, the tributary is a RPW that typically flows year round.
- Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: approximatly 1 acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

E.

See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify water body and summarize rationale supporting determination:

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	圏	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact judg	ride acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fir	ride acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTIO	N IV: DATA SOURCES.
A.	and MM	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: HUC 12040201, Sabine Lake. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Johnson Bayou, LA; 1:24,000. USDA Natural Resources Conservation Service Soil Survey. Citation: Johnson Bayou, LA. National wetlands inventory map(s). Cite name: Cameron Parish, LA. State/Local wetland inventory map(s): FEMA/FIRM maps: 2251940550; dated 04 May 1992. 100-year Floodplain Elevation is: 14 (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): Date: Cameron Lateral La
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: A desk review was completed on 20 December 2007 that included the collection and investigation of a 1995 & 2004 IR aerial photos, National Wetland Inventory Map (NWI), the Johnson Bayou USGS topographical map, and the applicant's submitted information. The infrared aerial photographs indicated

that the project area contains cooler signatures which can be indicative of hydrology. The clients data sheets confirm areas that meet the three criteria (hydrology, hydric soils, and hydrophytic vegetation) of a wetland as outlined in the 1987 Corps of Engineers Delineation Manual, however it is of the USACE's opinion that the wetlands extend outside the wetlands as listed in the delineation provided by the consultant. The Soil Survey and NWI Map indicate a hydrologic surface connection from the wetlands to Johnson Bayou, aTNW, via a tributary which flows directly into Johnson Bayou. The USGS topographic map also indicates that the project site contain waters of the United States, including neighboring wetlands to the tributary. The FEMA floodplain map indicates that the site is located within the 100-year flood plain of a water of the United States, specifically Johnson Bayou. The tributary of Johnson Bayou is the nearest water feature located 0.8 mile away. The subject wetlands are located approximately 1.9 miles East of Johnson Bayou, a TNW.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION 1: BACKGROUND INFORMATION A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 December 2007

В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District - SWG-2007-1944 - GIWW
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Calhoun City: Port O'Connor Center coordinates of site (lat/long in degree decimal format): Lat. 28.4391° N. Long. 96.4128° W. Universal Transverse Mercator: 14 753386mE 3148575mN (NAD 83) Name of nearest waterbody: Gulf Intracoastal Waterway (GIWW)
	Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: GIWW Name of watershed or Hydrologic Unit Code (HUC): East San Antonio Bay Watershed - 12100403 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 19 September 2007 Field Determination. Date(s): 12 December 2007
<u>SEC</u> A.]	TION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The	"navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: 380 linear feet: 40 width (ft) and/or 0.35 acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Not established at this time, Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Gulf Intracoastal Waterway (GIWW) .

Summarize rationale supporting determination: The GIWW is a navigable water that is subject to the ebb and flow of the tide and has been and is currently being used for interstate and foreign commerce.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. ☐ Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	Tributary stream order, if known:
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings/characteristics other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; physical markings; vegetation lines/changes in vegetation types.
Char	mical Characteristics: acterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Third.

	(iv) Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
2.	Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW	
	(i) Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:	
	(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:	
	Surface flow is: Pick List Characteristics:	
	Subsurface flow: Pick Eist. Explain findings: Dye (or other) test performed:	
	(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:	
	(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.	-
	(ii) Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:	
	(iii) Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
3.	Characteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.	

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
 other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III,D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 380 linear feet 40 width (ft), Or, 0.35 acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4	 Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
- 5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
٠.	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DSILLL	SOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, EGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY UCH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. If from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. Interstate isolated waters. Explain: Other factors. Explain:
Id	lentify water hody and summarize rationale supporting determination.

E.

See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	factoriudg	vide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such iding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	<u>CTIO</u>	N IV: DATA SOURCES.
A.	and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.
		Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps.
		U.S. Geological Survey map(s). Cite scale & quad name: Port O'Connor Quad, TX; 1:24,000. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):1995 & 2004 Infrared.
		or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: The GIWW is a navigable water that is subject to the ebb and flow of the tide and has been and is currently being used for interstate and foreign commerce.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SE A.	<u>CTION I: BACKGROUND INFORMATION</u> REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12/18/07
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Wanda Wood, SWG-2007-1484
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: TX County/parish/borough: Galveston City: Galveston Center coordinates of site (lat/long in degree decimal format): Lat. ° , Long. ° Universal Transverse Mercator: 15 317599E 3240273N (NAD 27) Name of nearest waterbody: Offats Bayou Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Offats Bayou Name of watershed or Hydrologic Unit Code (HUC): 12040204 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 12/18/07 Field Determination. Date(s):
SE A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The	ere *** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: 45 width (ft) and/or acres. Wetlands: acres.

Elevation of established OHWM (if known):2 foot.

c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters.

Non-regulated waters/wetlands (check if applicable):3

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Offats Bayou.

Summarize rationale supporting determination: On Galveston USACE TNW list.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": N/A.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i)	General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches
(ii)	Physical Characteristics:
	(a) Relationship with TNW:
	Tributary flows directly into TNW.
	Tributary flows through Pick List tributaries before entering TNW.
	Project waters are Pick List river miles from TNW.
	Project waters are Pick List river miles from RPW.
	Project waters are Pick List aerial (straight) miles from TNW.
	Project waters are Pick List aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ :
	Tributary stream order, if known:
	Thousary Stream order, it known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	Tributary Characteristics (check all that apply Tributary is: Natural Artificial (man-made). Explai Manipulated (man-altered). E	n:	in: .
		Tributary properties with respect to top of bank (esting Average width: feet Average depth: feet Average side slopes: Pick List.	mate): ·
		Primary tributary substrate composition (check all that Silts Sands Gravel Bedrock Wegetation. Type/%		☐ Concrete ☐ Muck
		Tributary condition/stability [e.g., highly eroding, slow Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope):	ughir %	g banks]. Explain: .
*	(c) _.	Flow: Tributary provides for: Pick List Estimate average number of flow events in review are Describe flow regime: Other information on duration and volume:	a/ye:	ır: Pick List
		Surface flow is: Pick List. Characteristics:		
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:		
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):		the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
		☐ Discontinuous OHWM. ⁷ Explain:		
		If factors other than the OHWM were used to determin High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list):	Mea	teral extent of CWA jurisdiction (check all that apply): un High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored Explain: tify specific pollutants, if known:	, oily	film; water quality; general watershed characteristics, etc.)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

		Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Characte	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(c) _.	Wetland Adjacency Determination with Non-TNW: □ Directly abutting □ Not directly abutting □ Discrete wetland hydrologic connection. Explain: □ Ecological connection. Explain: □ Separated by berm/barrier. Explain:
	(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	Char	mical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: tify specific pollutants, if known:
		ogical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	All v	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List roximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet 45 width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
****	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
	Demonstrate that water is isolated with a nexus to commerce (see E below).
SU G	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
777774	ntify water body and summarine retired and an arrangement of the

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
f j	acto udg	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional grant (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
F a T	Prov fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
A. SU	JPI	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study:
		U.S. Geological Survey Hydrologic Atlas: ☐ USGS NHD data. ☐ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 0.5 km Viginia Point, TX. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Aerial (Name & Date):
<u> </u>		or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

for

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

- A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 21 December 2007
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER; CESWG, TxDOT/LOP/WestGalvestonBay Dolphin I/GAL, SWG-2007-01326
- C. PROJECT LOCATION AND BACKGROUND INFORMATION: The project is located in Galveston Bay on either side of the Gulf Intracoastal Waterway (GIWW), south and immediately adjacent to the railroad trestle adjacent to the I- 45 Causeway Right-of-way.

State: Texas

County/parish/borough: Galveston

City: Galveston

Center coordinates of site (lat/long in degree decimal format): Lat. 29.2971 ° N. Long. 94.8860° M.

Universal Transverse Mercator: Zone 15, 316829 E, 3242174 N

Name of nearest waterbody: West Galveston Bay

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: West Galveston Bay

Name of watershed or Hydrologic Unit Code (HUC): 12040204, West Galveston Bay

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 21 December 2007

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: The project site is being placed to mark the GIWW as vessels approach a railroad bridge. The site is south and immediately adjacent to the railroad trestle adjacent to the Interstate Highway 45 Causeway Right-of-way,

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): 1

TNWs, including territorial seas Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 25 linear feet: 25 width (ft) and/or 0.022 acres.

Wetlands: acres

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

2

For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: West Galveston Bay.

Summarize rationale supporting determination: West Galveston Bay is subject to the ebb and flow of the daily tide and is traversed by the GIWW a federally maintained navigation channel. Therefore, it is a navigable water of the United States.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i)	General Area Conditions:
	Watershed size: Pickelsi
	Drainage area: Pick List
	Average annual rainfall: inches
	Average annual snowfall: inches
(ii)	Physical Characteristics:
, ,	(a) Relationship with TNW:
	☐ Tributary flows directly into TNW.
	Tributary flows through Rick List tributaries before entering TNW.
	Project waters are Pick List river miles from TNW.
	Project waters are Pick List river miles from RPW.
	Project waters are Pick List aerial (straight) miles from TNW.
	Project waters are Pick List aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain: .
	Identify flow route to TNW ⁵ :

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
Char	mical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

Tributary stream order, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv) Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i) Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Surface flow is: Pick List
	Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
	(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	 (ii) Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
	(iii) Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Characteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
 other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 25 linear feet25 width (ft), Or, 0.022 acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flow seasonally.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC SUC SUC SUC SUC SUC SUC SUC SUC SUC	PLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

Identify water body and summarize rationale supporting determination:

E.

 ⁸ See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	SUPI and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:
		USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name:1: 24,000, USGS Virginia Point TX, Quadrangle. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: Virginia Point TX, Quadrangle. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Aerial (Name & Date): or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature:
	₹7	Other information (please specify):multiple DA Permits within West Galveston Bay.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The project site is being placed to mark the GIWW as vessels approach a railroad bridge. The site is south and immediately adjacent to the railroad trestle adjacent to the Interstate Highway 45 Causeway Right-of-way West Galveston Bay is subject to the ebb and flow of the daily tide and is traversed by the GIWW a federally maintained navigation channel. Therefore, it is a navigable water of the United States.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 21 December 2007

- B. DISTRICT OFFICE, FILE NAME, AND NUMBER:CESWG, TxDOT/LOP/WestGalvestonBay Dolphin II/GAL, SWG-2007-01326
- C. PROJECT LOCATION AND BACKGROUND INFORMATION: The project is located in Galveston Bay on either side of the Gulf Intracoastal Waterway (GIWW), south and immediately adjacent to the railroad trestle adjacent to the I-45 Causeway Right-of-way.

State: Texas County/parish/borough: Galveston City: Galveston

Center coordinates of site (lat/long in degree decimal format): Lat. 29.2970 ° N. Long. 94.8856° N.

Universal Transverse Mercator: Zone 15, 316868 E, 3242163 N

Name of nearest waterbody: West Galveston Bay

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows; West Galveston Bay

Name of watershed or Hydrologic Unit Code (HUC): 12040204, West Galveston Bay

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 21 December 2007

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: The project site is being placed to mark the GIWW as vessels approach a railroad bridge. The site is south and immediately adjacent to the railroad trestle adjacent to the Interstate Highway 45 Causeway Right-of-way.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): 1

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 25 linear feet: 25 width (ft) and/or 0.022 acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):3

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

Supporting documentation is presented in Section III.F.

2

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: West Galveston Bay.

Summarize rationale supporting determination: West Galveston Bay is subject to the ebb and flow of the daily tide and is traversed by the GIWW a federally maintained navigation channel. Therefore, it is a navigable water of the United States.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

•	Watershed size: Pick List Drainage area: Pick List
	Average annual rainfall: inches
	Average annual snowfall: inches
(ii)	Physical Characteristics:
	(a) Relationship with TNW:
	☐ Tributary flows directly into TNW.
	☐ Tributary flows through Pick List tributaries before entering TNW.
	Project waters are Pick Esst river miles from TNW.
	Project waters are Pick List river miles from RPW.
	Project waters are Pick List aerial (straight) miles from TNW.
	Project waters are Pick List aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ :

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition advantaged away sediment deposition abrupt change in plant community other (list): Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings/characteristics tidal gauges other (list):
Chai	mical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

Tributary stream order, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

-			(iv)	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland firinge. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
		2.	Ch	haracteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW	
			(i)	Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:	
				(b) General Flow Relationship with Non-TNW: Flow is: PickList. Explain:	
				Surface flow is: Pick List Characteristics:	
				Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:	
				(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:	
				(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.	
			(ii)	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:	
			(iii)	i) Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
		3.	Cha	All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.	

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
 other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: 25 linear feet25 width (ft), Or, 0.022 acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	PLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

Identify water body and summarize rationale supporting determination:

E.

 ⁸ See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	Ш	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	facto	ride acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional grant (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	SUPI and:	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.
:		☐ Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: ☐ USGS NHD data. ☐ USGS 8 and 12 digit HUC maps.
		U.S. Geological Survey map(s). Cite scale & quad name: 1: 24,000, USGS Virginia Point TX, Quadrangle. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: Virginia Point TX, Quadrangle. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Actial (Name & Date):
		or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):multiple DA Permits within West Galveston Bay.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The project site is being placed to mark the GIWW as vessels approach a railroad bridge. The site is south and immediately adjacent to the railroad trestle adjacent to the Interstate Highway 45 Causeway Right-of-way West Galveston Bay is subject to the ebb and flow of the daily tide and is traversed by the GIWW a federally maintained navigation channel. Therefore, it is a navigable water of the United States.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

	CTION I: BACKGROUND INFORMATION
Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL39
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: San Pedro Center coordinates of site (lat/long in degree decimal format): Lat. 25 57' 5"° N, Long. 97 33' 38"° W. Universal Transverse Mercator: Name of nearest waterbody: Los Fresnos Canal Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/18/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Not Applicable. Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL39 is an elevated canal maintained strictly for the purposes of agriculture, without wetland fringe.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

		w	

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List
Drainage area: Pick List
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a)	Relationshi	p with	TNV	V:

☐ Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	b) General Tributary Characteristics (check all that apply):	
		Tributary is: Natural	
		Artificial (man-made). Explain:	
		Manipulated (man-altered). Explain:	
		<u> </u>	
		Tributary properties with respect to top of bank (estimate):	
		Average width: feet	
		Average depth: feet	
		Average side slopes: Pick List.	
		Teluge state stopes. Executive	
		Primary tributary substrate composition (check all that apply):	
		Silts Sands Concrete	
		☐ Cobbles ☐ Gravel ☐ Muck	
		Bedrock Vegetation. Type/% cover:	
		Other. Explain:	
		Guier Explain.	
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .	
		Presence of run/riffle/pool complexes. Explain:	
		Tributary geometry: Pick List	
		Tributary gradient (approximate average slope): %	
		Tributary gradient (approximate average stope):	
	(-)	c) Flow:	
	(c)	·/ 	
		Tributary provides for: Pick List	
		Estimate average number of flow events in review area/year: Pick List	
		Describe flow regime:	
		Other information on duration and volume:	
		Confine Class in District Characteristics	
		Surface flow is: Pick List. Characteristics:	
		Subsurface flow: Pick List. Explain findings:	
		Dye (or other) test performed:	
		Dye (or other) test performed.	
		Tributary has (check all that apply):	
		Bed and banks	
		OHWM ⁶ (check all indicators that apply):	
		clear, natural line impressed on the bank the presence of litter and debris	
		vegetation matted down, bent, or absent sediment sorting	
		☐ leaf litter disturbed or washed away ☐ scour	
		sediment deposition multiple observed or predicted flow events	
		water staining abrupt change in plant community	
		other (list):	
		☐ Discontinuous OHWM. ⁷ Explain:	
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that app	ly):
		☐ High Tide Line indicated by: ☐ Mean High Water Mark indicated by:	•
		oil or scum line along shore objects survey to available datum;	
		fine shell or debris deposits (foreshore) physical markings;	
		physical markings/characteristics vegetation lines/changes in vegetation types.	
		tidal gauges	
		other (list):	
		card (not).	
(iii)	Ch	Chemical Characteristics:	
(111)	Cha	Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteris	tics, etc.)
	CH	Explain:	, •)
	Ide	dentify specific pollutants, if known:	
	idel	dentity specific pollutants, it known.	

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Verical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii) Bio	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

r	1-			41	C- 11	
LOL	eacn	wetland,	Specify	ıne	10116	owing:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:			
 Non-RPWs⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C. 				
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .			
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:			
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:			
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.			
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.			
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.			
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.			
	Provide estimates for jurisdictional wetlands in the review area: acres.			
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (I-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).			
	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: other factors. Explain:			
100				

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.		
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:		
frin	Waters do not meet the Significant Nexus standard, where such a finding is required for jurisdiction. Explain. Other: (explain, if not covered above): Upland cut ditch maintained strictly for the purposes of agriculture, without wetland ge (0.05 acres).		
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.		
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.		
SEC	CTION IV: DATA SOURCES.		
Α.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data.		
	 ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; West Brownsville. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☑ National wetlands inventory map(s). Cite name: Brownsville, TX. ☑ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date): NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. ☐ or ☐ Other (Name & Date): ☐ Previous determination(s). File no. and date of response letter: ☐ Applicable/supporting case law: ☐ Applicable/supporting scientific literature: ☐ Other information (please specify): 		

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetland is a maintained upland cut agricultural ditch adjacent to a road. The ditch terminates at a levee.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL38
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 56' 39.211"° N, Long. 97 33' 26.533"° N. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande River Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: Field Determination. Date(s): 12/18/07
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.68 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally"

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

SECTION I: BACKGROUND INFORMATION

⁽e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande River.

Summarize rationale supporting determination: Rio Grande River supports interstate commerce and historically supported commercial vessel traffic. It is considered navigable by the Corps of Engineers to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL38 is a POW with PEM fringe borrow pit excavated in an unnamed resaca and connected to linear wetlands (including WLs 36 and 37) that eventually flow into the Rio Grande River at Champion Bend. WL38 is located within 300' of Rock Bend (a resaca located on the opposing side of a levee to the south) and approximately 2,500' from the Los Fresnos Pump Bend of the Rio Grande River (located to the southwest of WL38). Based upon the size of the vegetation in WL38, it appears that this area is exhibiting normal circumstances (existing features have been present for the past 5 years).

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

	Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ : Tributary stream order, if known:
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. ⁷ Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics vegetation lines/changes in vegetation types.
(iii) Che	emical Characteristics:

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:
Identify specific pollutants, if known:

	(iv) E	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Chara	acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		Physical Characteristics: a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List
		Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
	(4	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	Ò	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: dentify specific pollutants, if known:
	(iii) E [[]	Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	A	Acteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

۱.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	✓ Wetlands adjacent to TNWs: 0.68 acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flow
	seasonally:
	scasonarry

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. \$	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; West Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. Other (Name & Date):
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL 38 is a POW with PEM fringe and is an excavated borrow pit. The PEM component is dominated by cattail with some black willow and Andropogon glomeratus. Based upon the size of the vegetation in WL38, it appears that this area is exhibiting normal circumstances (existing features have been present for the past 5 years).

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL37
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 56' 19.313"° N, Long. 97 32' 55.117"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande River
	Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 ☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. ☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/18/07
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): □ TNWs, including territorial seas □ Wetlands adjacent to TNWs □ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs □ Non-RPWs that flow directly or indirectly into TNWs □ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs □ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs □ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs □ Impoundments of jurisdictional waters □ Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.17 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande River.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. It is considered navigable by the Corps of Engineers to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL37 is a PEM wetland adjacent to WL 36 and connected to linear wetlands that eventually flow into the Rio Grande River WL36 is located approximately 750' from the Rio Grande River (at Lloyd Bend), but connects to the river by flowing approximately 8,000' to the east along an agricultural ditch and entering the river via a pumping station at Champion Bend.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

^{*} Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):
		☐ Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)		emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Ibid.

Identify specific pollutants, if known:

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List . Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: uracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	restricts of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

i.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 0.17 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flow seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	■ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: other factors. Explain:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. :	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps. plans. plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS NHD data. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; West Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
	or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL 37 is a PEM wetland that used to stage irrigation water. It is dominated by Parkensonia aculeata, Aster spinosa, Andropogon glomeratus, Clematus sp., and Sabal minor. WL37 is a PEM wetland adjacent to WL 36 and connected to linear wetlands that eventually flow into the Rio Grande. WL36 is located approximately 750' from the Rio Grande (at Lloyd Bend), but connects to the river by flowing approximately 8,000' to the east along an agricultural ditch and entering the river via a

pumping station at Champion Bend. Although WL37 is used for agricultural purposes, there is sufficient evidence of wetland vegetation, hydrology, and hydric soils to classify it as a wetland according to the criteria in the 1987 manual.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL36
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 56' 18.482"° N, Long. 97 32' 53.949"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande River Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande River Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/18/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain: Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande River supports interstate commerce and historically supported commercial vessel traffic. It is considered navigable by the Corps of Engineers to Valverde County, Texas.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL36 is a PFO wetland adjacent to WL 37 and connected to linear wetlands that eventually flow into the Rio Grande River WL36 is located approximately 750' from the Rio Grande River (at Lloyd Bend), but connects to the river by flowing approximately 8,000' to the east along an agricultural ditch and entering the river via a pumping station at Champion Bend.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody 4 is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches

(ii) Phy (a)

sical Characteristics:
Relationship with TNW:
☐ Tributary flows directly into TNW.
Tributary flows through Pick List tributaries before entering TNW.
Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

¹ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)		emical Characteristics: tracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Identify specific pollutants, if known:

	(iv)	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)	Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
	(iii	Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	Aracteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For	each	wetland.	snecify	the	following:
LOI	Cucii	Wolliam,	Speciff	1110	TOHO WILLES.

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	Wetlands adjacent to TNWs: 0.04 acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally: .

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ontify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.						
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):						
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.						
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.						
SEC	TION IV: DATA SOURCES.						
A. S	A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data.						
	 ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; West Brownsville. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☑ National wetlands inventory map(s). Cite name: Brownsville, TX. ☑ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. ☐ Other (Name & Date): 						
Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):							

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL 36 is a PFO wetland that is used to stage irrigation water. It is dominated by Jerusalem thorn. WL36 is located approximately 750' from the Rio Grande River (at Lloyd Bend), but connects to the river by flowing approximately 8,000' to the east along an agricultural ditch and entering the river via a pumping station at Champion Bend.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEO A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL35
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 25.076"° N, Long. 97 44' 40.141"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	<u>CTION II: SUMMARY OF FINDINGS</u> RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Not Applicable. Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL35 is landward of waters of the US (Rio Grande) beyond 4 man-made barriers (1 levee [300' to west], 3 roads 1,423', 4,567', and 1.127 miles]), all of which are above the 100-year floodplain and neither have pipes or

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

culverts linking WL35 to the nearest waterbody (Rio - 500' and Grande). WL35 has crop land on three sides and lies approximately 300' upslope (landward) of an agricultural ditch (WL34). WL35 is located approximately 1.17 miles from the Rio Grande. WL35 does not perform any interstate commerce function. The conditions present during the field survey were observed to be the normal circumstance (present for at least 5 years).

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:				
	Summarize rationale supporting determination:				
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":				

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

`,	Watershed size: Pick List Drainage area: Pick List				
	Average annual rainfall: inches				
	Average annual snowfall: inches				
(ii)	Physical Characteristics:				
` '	(a) Relationship with TNW:				
	Tributary flows directly into TNW.				
	Tributary flows through Pick List tributaries before entering TNW				
	Project waters are Pick List river miles from TNW.				
	Project waters are Pick List river miles from RPW.				
	Project waters are Pick List aerial (straight) miles from TNW.				
	Project waters are Pick List aerial (straight) miles from RPW.				
	Project waters cross or serve as state boundaries. Explain:				
	Identify flow route to TNW ⁵ :				
	Tributary stream order, if known:				

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:				
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.				
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:				
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %				
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:				
		Surface flow is: Pick List. Characteristics:				
		Subsurface flow: Pick List . Explain findings:				
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment sorting sediment deposition destruction destruction of terrestrial vegetation the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment sorting sediment deposition destruction destruction of terrestrial vegetation the presence of litter and debris destruction of terrestrial vegetation the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sedi				
		☐ Discontinuous OHWM. ⁷ Explain: .				
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Oil or scum line along shore objects In fine shell or debris deposits (foreshore) In physical markings/characteristics In tidal gauges Other (list): Mean High Water Mark indicated by: Survey to available datum; In physical markings; Vegetation lines/changes in vegetation types.				
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc. Explain: ntify specific pollutants, if known:				

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

This

	(iv) B	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Chara	acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		Physical Characteristics: a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(Wetland Adjacency Determination with Non-TNW; □ Directly abutting Not directly abutting □ Discrete wetland hydrologic connection. Explain: □ Ecological connection. Explain: □ Separated by berm/barrier. Explain: .
	(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	()	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: dentify specific pollutants, if known:
	(iii) E [[[Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	A	acteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DEC SUC	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: other factors. Explain:
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E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.						
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).						
(Rio	Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): WL35 is landward of waters of the US (Rio Grande) beyondd 2 man-made barriers (2 es), both of which are above the 100-year floodplain and neither have pipes or culverts linking WL35 to the nearest waterbody Grande). WL35 has crop land on three sides and lies approximately 300' upslope (landward) of an agricultural ditch (WL34) acres). WL35 does not perform any interstate commerce function.						
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional						
	judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres.						
	☐ Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.						
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres.						
	Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.						
SEC	TION IV: DATA SOURCES.						
A. S	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked						
	and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:						
	 ☑ Data sheets prepared/submitted by or on behalf of the applicant/consultant. ☑ Office concurs with data sheets/delineation report. 						
	☐ Office does not concur with data sheets/delineation report. ☐ Data sheets prepared by the Corps:						
	Corps navigable waters' study:						
	U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data.						
	 ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; La Paloma. 						
	 ☑ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; La Paloma. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☑ National wetlands inventory map(s). Cite name: La Paloma, TX. 						
	 State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☑ Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. 						
 □ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) □ Photographs: □ Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. 							
	or Other (Name & Date):						
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law:						
	Applicable/supporting scientific literature: Other information (please specify):						

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL 35 is a narrow PFO wetland dominated by Jeruselum thorn, soft rush, Scirpus sp., and Scirpus americana. WL35 does not perform any interstate commerce function.						

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEO A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL34
C.	State:Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 30"° N, Long. 97 44' 44"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande River
	Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: None Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 ☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. ☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	ere Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the siew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Not Applicable. Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):3

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The area was historically maintained as agricultural water. It lies landward of waters of the US (Rio Grande)

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

beyond 2 man-made barriers (2 levees), both of which are above the 100-year floodplain and neither have pipes or culverts linking WL34 to the nearest waterbody (Rio Grande River). The area is surrounded by crop lands.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

I.	TNW Identify TNW:	
	Summarize rationale supporting determination: .	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

I. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

`,	Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches
(ii)	Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW.
	Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ : Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment sorting sediment deposition multiple observed or predicted flow events water staining other (list): Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics tidal gauges other (list):
Cha	emical Characteristics: tracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: tify specific pollutants, if known:

(iii)

[&]quot;A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Third.

	(iv) Bio	Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Charac	teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		ysical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(b)	General Flow Relationship with Non-TNW: Flow is: Pick List . Explain:
		Surface flow is: Pick List Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(c)	Wetland Adjacency Determination with Non-TNW: □ Directly abutting □ Not directly abutting □ Discrete wetland hydrologic connection. Explain: □ Ecological connection. Explain: □ Separated by berm/barrier. Explain:
	(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	Ch	nemical Characteristics: naracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: entify specific pollutants, if known:
	(iii) Bi	ological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Al	teristics of all wetlands adjacent to the tributary (if any) I wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

I.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU ⁰	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: other factors. Explain:

E.

 ^{*}See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. □ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
	Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: W. Other: (explain, if not covered above): L34 lies landward of waters of the US (Rio Grande) beyond 2 man-made barriers (2
	es), both of which are above the 100-year floodplain and neither have pipes or culverts linking WL34 to the nearest waterbody
(Rio	Grande). The area is surrounded by crop lands (0.12 acres).
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
	Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres.
	 □ Other non-wetland waters: acres. List type of aquatic resource: □ Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such
	a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
	Lakes/ponds: acres.
	☐ Other non-wetland waters: acres. List type of aquatic resource: . ☐ Wetlands: acres.
SEC	TION IV: DATA SOURCES.
A. S	UPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked
	and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
	☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
	☐ Office concurs with data sheets/delineation report. ☐ Office does not concur with data sheets/delineation report.
	Data sheets prepared by the Corps: .
	☐ Corps navigable waters' study: ☐ U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
	 ✓ U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☐ USGS NHD data.
	☐ USGS 8 and 12 digit HUC maps.
	 ✓ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; La Paloma. ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
	 National wetlands inventory map(s). Cite name: La Paloma, TX. State/Local wetland inventory map(s): .
	FEMA/FIRM maps:
	U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; La Paloma. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: La Paloma, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
	or ☐ Other (Name & Date): ☐ Previous determination(s). File no. and date of response letter:
	Applicable/supporting case law:
	Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Upland cut maintained irrigation ditch; non-jurisdictional; proposed fence crosses the ditch then follows the northeast berm of the ditch.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL33
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 42.296" N, Long. 97 45' 1.195" W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande River Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande
	Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the lew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. The Rio Grande is considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL32 is a portion of Las Sierritas Banco No. 8 (along with WLs 30, 31, and 32). It is located within the historic floodplain of the Rio Grande and connects to the river at the San Berrito Pumping Station

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Pick List Drainage area: inches Average annual rainfall: Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

	Identify flow route to TNW ⁵ : Tributary stream order, if known:
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. ⁷ Explain:
	-
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:
Ider	ntify specific pollutants, if known:

(iii)

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW. ⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
2.	Cha	racteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW	
	(i)	Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:	
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:	
		Surface flow is: Pick List Characteristics:	
		Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:	
		(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:	
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.	
	(ii)	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; a characteristics; etc.). Explain: Identify specific pollutants, if known:	general watershed
	(iii	Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:	
3.	Cha	All wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: PickList Approximately () acres in total are being considered in the cumulative analysis.	

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 0.44 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	■ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: entify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. :	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Data sheets prepared by the Corps: Campa purish by autors? Attacks.
	 □ Corps navigable waters' study: □ U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. □ USGS NHD data. □ USGS 8 and 12 digit HUC maps.
	U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
	or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL33 is a PEM wetland also containing Arundo donax. However evidence of hydric vegetation, hydric soils, and hydrology were observed during the site review to support classifying WL33 as a wetland in accordance with the criteria in the 1987 manual.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL32
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 39.590" N, Long. 97 45' 7.546" N. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande River Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
revi	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: CWA SECTION 404 DETERMINATION OF JURISDICTION.
	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.14 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. The Rio Grande is considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL32 is a portion of Las Sierritas Banco No. 8 (along with WLs 30, 31, and 33). It is located within the historic floodplain of the Rio Grande and connects to the river at the San Berrito Pumping Station.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Directionage OHWM ⁷ Function
		☐ Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: uracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: ntify specific pollutants, if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW. ⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List . Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: attify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	Αll	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

Ι.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	✓ Wetlands adjacent to TNWs: 0.14 acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally: .

☐ Tributa ☐ Other n	imates for jurisdictional wa ry waters: linear feet ion-wetland waters: a y type(s) of waters: .		heck all that apply):	
■ Waterbody	at flow directly or indirect that is not a TNW or an RP isdictional. Data supporting	W, but flows directly or		d it has a significant nexus with a
☐ Tributa ☐ Other n		,	neck all that apply):	
☐ Wetlands d ☐ Wetlan indica	tly abutting an RPW that irectly abut RPW and thus did directly abutting an RPV ting that tributary is perenny abutting an RPW:	are jurisdictional as adjact where tributaries typical	ent wetlands. Illy flow year-round. Prov	
season	ds directly abutting an RPV al in Section III.B and ration and RPW:	where tributaries typical value in Section III.D.2, a	ally flow "seasonally." Pr bove. Provide rationale in	ovide data indicating that tributary is dicating that wetland is directly
Provide acreage	estimates for jurisdictional	wetlands in the review a	rea: acres.	
☐ Wetlands the with single in the world with single in the world in t		RPW, but when considered than the street and settlement that the street and settlement that the street when th	d in combination with the	to TNWs. tributary to which they are adjacent prisidictional. Data supporting this
Provide acreage	estimates for jurisdictional	wetlands in the review a	rea: acres.	
☐ Wetlands a with simila		have when considered in ds, have a significant ner	combination with the trib	outary to which they are adjacent and ictional. Data supporting this
	es for jurisdictional wetland	s in the review area:	acres.	
As a general rule Demonstrat Demonstrat	of jurisdictional waters. ⁹ e, the impoundment of a jurise that impoundment was create that water meets the crite	eated from "waters of th ria for one of the categor	e U.S.," or ies presented above (1-6),	or
☐ Demonstra	te that water is isolated with	a nexus to commerce (s	ee E below).	
DEGRADATION O SUCH WATERS (C	HECK ALL THAT APP	VHICH COULD AFFE LY): ¹⁰	CT INTERSTATE COM	TLANDS, THE USE, IMERCE, INCLUDING ANY
from which fish of		aken and sold in intersta	te or foreign commerce.	
Identify water body	and summarize rationale	supporting determinat	ion: .	

E.

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
Α.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria.
	 U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs:

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL 32 is an excavated PFO/PSS wetland that appears to have been constructed as a borrow pit. It is connected to WL31. The dominant vegetation includes sand bar willow, cattail, Baccharis neglecta, and Andropogon sp.. Based upon the relative size of the woody species, the excavation appears to have occurred greater than 5 years ago, and for at least the past 5 years the area has functioned as a wetland.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL31
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 39.542"° N, Long. 97 45' 9.876"° N. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.14 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

I. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. Considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL31 is a portion of Las Sierritas Banco No. 8 (along with WLs 30, 32, and 33). It is located within the historic floodplain of the Rio Grande and connects to the river at the San Berrito Pumping Station.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.I for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

I. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume: Surface flow is: Pick List. Characteristics: Subsurface flow: Pick List. Explain findings:
		□ Dye (or other) test performed: Tributary has (check all that apply): □ Bed and banks □ OHWM ⁶ (check all indicators that apply): □ clear, natural line impressed on the bank □ changes in the character of soil □ shelving □ vegetation matted down, bent, or absent □ leaf litter disturbed or washed away □ sediment deposition □ water staining □ other (list): □ Discontinuous OHWM. ⁷ Explain: Tributary has (check all that apply): □ the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics vegetation lines/changes in vegetation types. tidal gauges other (list):
(iii)	Cha	emical Characteristics: tracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: trify specific pollutants, if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW. ⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width):
			Wetland fringe. Characteristics:
		Ш	Habitat for:
			Federally Listed species. Explain findings: Fish/spawn areas. Explain findings:
			Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
2.	Cha	aract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		sical Characteristics:
		(a)	General Wetland Characteristics:
			Properties: Wetland size: acres
			Wetland size: acres Wetland type. Explain: .
			Wetland quality. Explain:
			Project wetlands cross or serve as state boundaries. Explain:
			Troject Menando Croso er Serve do State Countaintes. Emphanic
		(b)	General Flow Relationship with Non-TNW:
			Flow is: Pick List . Explain:
			Surface flow is: Pick List
			Characteristics: .
			Subsurface flow: Pick List. Explain findings: .
			Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW:
			Directly abutting
			Not directly abutting
			Discrete wetland hydrologic connection. Explain:
			☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
			Separated by berni/barrier. Explain.
		(d)	Proximity (Relationship) to TNW
		(0)	Project wetlands are Pick List river miles from TNW.
			Project waters are Pick List aerial (straight) miles from TNW.
			Flow is from: Pick List.
			Estimate approximate location of wetland as within the Pick List floodplain.
	(11)	~ :	
	(11)		emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed
		Cita	characteristics; etc.). Explain:
		Ider	ntify specific pollutants, if known:
	(iii) <u>Bi</u> o	logical Characteristics. Wetland supports (check all that apply):
		Н	Riparian buffer. Characteristics (type, average width):
		\mathbb{H}	Vegetation type/percent cover. Explain:
		Ш	Habitat for:
			Federally Listed species. Explain findings: Fish/spawn areas. Explain findings:
			Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
3.	Ch		eristics of all wetlands adjacent to the tributary (if any)
			wetland(s) being considered in the cumulative analysis: Pick List
		App	proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	☑ Wetlands adjacent to TNWs: 0.14 acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. lnterstate isolated waters. Explain: Other factors. Explain:
iue	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. \$	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.
	 ☐ Office does not concur with data sheets/delineation report. ☐ Data sheets prepared by the Corps: ☐ Corps navigable waters' study: ☐ U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☐ USGS NHD data. ☐ USGS 8 and 12 digit HUC maps.
	U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or ☐ Other (Name & Date):
	Previous determination (s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL 31 is an excavated PFO/PSS wetland that appears to have been constructed as a borrow pit. It is adjacent to WL30 (separated by a dirt road) and connected to WL32. The dominant vegetation includes sand bar willow, cattail, Baccharis neglecta, and Andropogon sp.. Based upon the relative size of the woody species, the excavation appears to have occurred greater than 5 years ago, and for at least the past 5 years the area has functioned as a wetland.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

	CTION I: BACKGROUND INFORMATION
Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL30
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 38.427"° N, Long. 97 45' 10.693"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande
	Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090001 ☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. ☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
SE(A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.18 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. Considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL30 is a portion of Las Sierritas Banco No. 8 (along with WLs 31, 32, and 33). It is located within the historic floodplain of the Rio Grande and connects to the river at the San Berrito Pumping Station.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.I for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):
		☐ Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii) Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Ch	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 0.18 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DEC SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ontify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or Other (Name & Date): Previous determination(s). File no. and date of response letter:
	Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL 30 is an excavated PFO/PSS wetland that appears to have been constructed as a borrow pit. It is adjacent to WL31 (separated by a dirt road) and connected to WL32. The dominant vegetation includes sand bar willow, cattail, Baccharis neglecta, and Andropogon sp.. Based upon the relative size of the woody species, the excavation appears to have occurred greater than 5 years ago, and for at least the past 5 years the area has functioned as a wetland.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL29
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 49.373° N, Long. 97 45' 9.251"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	ere Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.09 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. Considered by Corps of Engineers to be navigable up to Valverde Co., Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL29 is a PFO/PEM wetland (Las Sierritas Banco No. 8) and is connected to linear wetlands that eventually drain to the Rio Grande at the San Berrito Pumping Station. WL29 is located approximately 3,000' from the Rio Grande.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): This properties were OLIVIALAT Forelation.
		Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: tracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: httify specific pollutants, if known:

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. Ibid.

	(iv)	Riparian corridor. Characteristics (type, average width): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)	Physical Characteristics: a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics:
		Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		Wetland Adjacency Determination with Non-TNW: □ Directly abutting □ Not directly abutting □ Discrete wetland hydrologic connection. Explain: □ Ecological connection. Explain: □ Separated by berm/barrier. Explain:
		Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: dentify specific pollutants, if known:
	(iii)	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	acteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
 other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	₩etlands adjacent to TNWs: 0.09 acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial: .
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally: .

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary i seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: entify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such adding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
<u>ON IV: DATA SOURCES</u> .
PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL29 is a PFO/PEM wetland with sand bar willow and Arundo donax around the perimeter. The area around the western boundary is rubble/asphalt/concrete fill (along access roadside).

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL28
C.	State:Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 2' 45" N, Long. 97 45' 15" W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande
	Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	ere Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):³

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL28 is a large (40' wide) irrigation ditch maintained strictly for the purposes of agriculture, without wetland fringe.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

TABLE

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	Identify TNW:	
	Summarize rationale supporting determination:	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Tributary has (check all that apply): the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
		Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics tidal gauges other (list): wegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: ntify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷lbid.

	(iv)	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Significant of the species of the speci
2.	Cha	tracteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)	Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW: □ Directly abutting □ Not directly abutting □ Discrete wetland hydrologic connection. Explain: □ Ecological connection. Explain: □ Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
	(iii) Biological Characteristics. Wetland supports (check all that apply): ☐ Riparian buffer. Characteristics (type, average width): ☐ Vegetation type/percent cover. Explain: ☐ Habitat for: ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings:
3.	Cha	aracteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

I	For	anch	wetland.	cnacify	the	fallo	vina.
	ror	eacn	wettana.	Specify	ine	tono	wing:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial: .
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ontify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): WL28 is a large (40' wide) irrigation ditch maintained strictly for the purposes of
agri	cuitt	ire, wtihout wetland fringe.
	facte judg	ride acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fir	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such iding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	TIO	N IV: DATA SOURCES.
	SUPI	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps:
	M	Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps.
		U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria/La Paloma. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or Other (Name & Date):
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL28 is a maintained irrigation ditch contained on both sides by levees. The ditch flows southward through a control structure directly to the Rio Grande.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

<u>SEC</u> 4.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL27
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 03' 06.496" N, Long. 97 46' 04.48" Universal Transverse Mercator: Name of nearest waterbody: Rio Grande
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090001 ☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. ☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	I. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Not Applicable. Elevation of established OHWM (if known): Non regulated waters (wetlands (check if applicable): 3

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL27 is an upland cut ditch maintained strictly for the purposes of agriculture, without wetland fringe.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:
	Summarize rationale supporting determination: .
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

()	Watershed size: Pick List Drainage area: Pick List
	Average annual rainfall: inches
	Average annual snowfall: inches
(ii)	Physical Characteristics:
	(a) Relationship with TNW:
	☐ Tributary flows directly into TNW.
	Tributary flows through Pick List tributaries before entering TNW.
	Project waters are Pick List river miles from TNW.
	Project waters are Pick List river miles from RPW.
	Project waters are Pick List aerial (straight) miles from TNW.
	Project waters are Pick List aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ :
	Tributary stream order, if known:
	indulary stream order, it known.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/rifile/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Tributary has (check all that apply): the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
	☐ Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics tidal gauges other (list):
Cha	emical Characteristics: uracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: httify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv)		ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for:
			Federally Listed species. Explain findings:
			☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
2.	Cha	aract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		sical Characteristics:
		(a)	General Wetland Characteristics:
			Properties: Wetland size: acres
			Wetland type. Explain: .
			Wetland quality. Explain: .
			Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List
			Characteristics: .
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: Directly abutting
			Not directly abutting
			Discrete wetland hydrologic connection. Explain:
			Ecological connection. Explain:
			Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW
			Project wetlands are Pick List river miles from TNW.
			Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List.
			Estimate approximate location of wetland as within the Pick List floodplain.
			•
	(ii)		emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed
		Cha	characteristics; etc.). Explain:
		lder	ntify specific pollutants, if known:
	(iii	Rio	logical Characteristics. Wetland supports (check all that apply):
	(111)		Riparian buffer. Characteristics (type, average width):
			Vegetation type/percent cover. Explain: .
			Habitat for:
			Federally Listed species. Explain findings: Fish/spawn areas. Explain findings:
			Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
3.	Che	aract	eristics of all wetlands adjacent to the tributary (if any)
٥.	Cita		wetland(s) being considered in the cumulative analysis: Pick_List
			proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial: .
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	 Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is
	seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ontify water body and summarize rationale supporting determination:

E.

 ^{*}See Footnote # 3.
 *To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 *Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
Other: (explain, if not covered above): Upland cut ditch maintained strictly for the purposes of agriculture, without wetland ge (0.01 acres).
Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
TION IV: DATA SOURCES.
SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data.
 ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☑ National wetlands inventory map(s). Cite name: Santa Maria, TX. ☐ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. ☐ or ☐ Other (Name & Date): ☐ Previous determination(s). File no. and date of response letter: ☐ Applicable/supporting case law: ☐ Applicable/supporting scientific literature: ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL27 is a maintained irrigation ditch contained on both sides by levees. The ditch flows southward through a control structure directly to the Rio Grande.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	<u>CTION I: BACKGROUND INFORMATION</u> REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL26
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 3' 24.051"° N, Long. 97 46' 32.369"° N. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.79 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

I. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande support insterstate commerce and historically supported commercial vessel traffic. The Corps of Engineers considers the river to be navigable to Valverde Co., Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL 26 is located approximately 1,300" from the Rio Grande River along an unnamed resaca. WL26 has an open water protion with PEM fringe and is bisected from the adjacent WL25 (lying to the west of WL26) by a dirt road. The two wetlands were once one larger system. WL26 continues in a southeastern direction where it connects to the Rio Grande River.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List
Drainage area: Pick List
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Project waters cross of serve as state boundaries. Explain

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM6 (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving bed vegetation matted down, bent, or absent sediment sorting sediment deposition multiple observed or predicted flow events water staining other (list): Discontinuous OHWM.7 Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics physical markings/characteristics vegetation lines/changes in vegetation types.
(iii)	Cha Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Identify specific pollutants, if known:

	(iv)	Biol	ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics: Subsurface flow: Pick List. Explain findings:
		(c)	□ Dye (or other) test performed: Wetland Adjacency Determination with Non-TNW: Directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	` ,	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics: etc.). Explain: https://example.com/reserved-brown-characteristics.etc.).
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- I. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 0.79 acres.
2.	 RPWs that flow directly or indirectly into TNWs. □ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: WL26 is a POW with PFO and PEM fringe that historically connected to WL25 (now separated by a dir road) and is connected to linear wetlands that eventually drain to the Rio Grande River. □ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	 Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly
	abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: acres.
	Trovide deleage estimates has jurisdictional victidades in the feview area.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	DLATED INTERSTATE OR INTRA-STATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
Α.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data.
	 ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☑ National wetlands inventory map(s). Cite name: Santa Maria, TX. ☑ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. ☐ or ☐ Other (Name & Date): ☐ Previous determination(s). File no. and date of response letter: ☐ Applicable/supporting case law:
	Applicable/supporting scientific literature: Other information (please specify):

Identify water body and summarize rationale supporting determination:

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL26 is a PEM/PFO/POW complex that historically was connected to WL25, but now is separated by a dirt road. The dominant vegetation includes black willow, sand bar willow, Scirpus californicus, and cattail.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC	TION I: BACKGROUND INFORMATION
4.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL25
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Los Indios Center coordinates of site (lat/long in degree decimal format): Lat. 26 3' 22.545" N, Long. 97 46' 32.791" W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande
	Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
SEC	CTION II: SUMMARY OF FINDINGS RHA SECTION IO DETERMINATION OF JURISDICTION.
revi	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: CWA SECTION 404 DETERMINATION OF JURISDICTION.
	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports insterstate commerce and historically supported commercial vessel traffic. Considered by Corps of Engineers to be navigable up to Valverde Co., Texas.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL 25 is located approximately 2,800' from the Rio Grande along an unnamed resaca. WL25 has an open water protion with PEM fringe and is bisected from the adjacent WL26 (lying to the east of WL25) by a dirt road. The two wetlands were once one larger system. WL26 continues in a southeastern direction approximately 1,100' where it connects to the Rio Grande.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM6 (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line vegetation matted down, bent, or absent sediment sorting leaf litter disturbed or washed away scour sediment deposition multiple observed or predicted flow events water staining abrupt change in plant community other (list): Discontinuous OHWM.7 Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics vegetation lines/changes in vegetation types.
(iii)		emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Identify specific pollutants, if known: .

	(iv)	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)	Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
	(iii)	Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	Aracteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- I. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	☑ Wetlands adjacent to TNWs: 1.08 acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial:
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally: .

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU(CLATED INTERSTATE OR INTRA-STATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. 3	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps:
	 □ Corps navigable waters' study: □ U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. □ USGS NHD data. □ USGS 8 and 12 digit HUC maps.
	 U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. U.S. DA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs:
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL25 is a PEM/PFO/POW complex that historically was connected to WL26, but now is divided by a dirt road. WL26 continues to the east where it terminates at the shoreline of the Rio Grande. The dominant vegetation includes black willow, sand bar willow, Scirpus californicus, and cattail.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEO	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL24
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Santa Maria Center coordinates of site (lat/long in degree decimal format): Lat. 26 3' 14.737"° N, Long. 97 49' 50.003"° . Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
SE(CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
revi	ere Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

2. Non-regulated waters/wetlands (check if applicable):³

Elevation of established OHVM (if known):

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL24 is an upland cut ditch maintained strictly for the purposes of agriculture, without wetland fringe. The vegetation or soils do not meet the criteria in the 1987 manual for WL24 to be classified as a wetland.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	Identify TNW:	
	Summarize rationale supporting determination: .	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

	Watershed size:	Pick List
	Drainage area:	Pick List
	Average annual rainf	
	Average annual snow	fall: inches
(ii)	Physical Characteri	stics:
(,	(a) Relationship wit	
	` '	ows directly into TNW.
	= -	ows through Pick List tributaries before entering TNW
	Project waters a	re Pick List river miles from TNW.
	Project waters a	re Pick List river miles from RPW.
	*	re Pick List aerial (straight) miles from TNW.
	Project waters a	re Pick List aerial (straight) miles from RPW.
	•	ross or serve as state boundaries. Explain:
	Identify flow ro	ute to TNW ⁵ :
		order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM6 (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM.7 Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; survey to available datum; physical markings/characteristics physical markings/characteristics vegetation lines/changes in vegetation types.
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv)	Biol	ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racte	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis.

C	41 1		C 11	
ror each	wetland.	specify the	10L	lowing:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	 RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: WL24 is connected to WL22 via an underground valved pipe and is ultimately connected to the Rio Grande River. Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. □ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. □ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: □ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is
	seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, CGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		ride estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	\boxtimes	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): Upland cut ditch maintained strictly for the purposes of agriculture, without wetland
fring		
	facto judg	ride acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	TIO	NIV: DATA SOURCES.
		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked
Α		requested, appropriately reference sources below):
		Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
	\boxtimes	Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.
	_	Office does not concur with data sheets/delineation report.
		Data sheets prepared by the Corps: Corps navigable waters' study:
		U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
		USGS NHD data.
	\boxtimes	☑ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria.
		USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
	Ä	National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s):
		FEMA/FIRM maps: .
		100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Acrial (Name & Date): NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
	_	or Other (Name & Date):
	\mathbb{R}	Previous determination(s). File no. and date of response letter: Applicable/supporting case law:
	H	Applicable/supporting scientific literature: .
		Other information (please specify):

Identify water body and summarize rationale supporting determination:

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL24 is an irrigation ditch excavated from uplands and hydrolog WL22 via an underground valved pipe. The banks of WL24 are dominated by Guinea grass and Sporobolus (the latter in t areas). The vegetaiton or soils do not meet the criteria in the 1987 manual for WL24 to be classified as a wetland.	ically connected to he inundated

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	TION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL23
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Santa Maria Center coordinates of site (lat/long in degree decimal format): Lat. 26 3' 32.529° N, Long. 97 49' 50.706"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090001
	Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 3.25 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

I. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande support insterstate commerce and historically supported commercial vessel traffic. Considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL23 is located within approximately 20000' of the Rio Grande River in an area that was excavated within a historic wetland (Palma Banco No. 25) for levee construction. It is connected to the Rio Grande River by a control structure (La Fena Pumping Station), which pumps water from the river into an adjacent agricultural ditch (WL22). The adjacent levee seeps water and hydrates the excavated portion of WL23. Supplemental hydrology to WL23 is provided by the contiguos Palm Banco No. 25.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

	Project waters cross or serve as state boundaries. Explain: .
	Identify flow route to TNW ⁵ : . Tributary stream order, if known: .
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM6 (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition abrupt change in plant community Discontinuous OHWM.7 Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Che	emical Characteristics:

(iii)

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Characterize tributary (e.g., water color is c	lear, discolored	, oily film; water quality;	general watershed cl	haracteristics, etc.).
Explain:				
Identify specific pollutants, if known:				

	(iv)	Biol	ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List roximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- I. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

Ι.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: 3.25 acres.
2.	 RPWs that flow directly or indirectly into TNWs. □ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: □ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flow seasonally:

		Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Nor	n-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Pro	vide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.		tlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: WL23 is a wet seep along base of levee (containing WL22) that is hydrologically connected to the Rio Grande River by other linear wetlands.
		Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Pro	vide acreage estimates for jurisdictional wetlands in the review area: acres.
5.		tlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Pro	vide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	We	tlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Pro	vide estimates for jurisdictional wetlands in the review area: acres.
7.		a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU	GRA CH V whice from whice Inter	INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, ADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY WATERS (CHECK ALL THAT APPLY): 10 ch are or could be used by interstate or foreign travelers for recreational or other purposes. In which fish or shellfish are or could be taken and sold in interstate or foreign commerce. It is considered waters. Explain: The er factors. Explain:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	wide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional general (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
		vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTIO	ON IV: DATA SOURCES.
A. S	and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report.
		Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data.
		 ☑ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Acrial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
		or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting ease law: Applicable/supporting scientific literature: Other information (please specify):

Identify water body and summarize rationale supporting determination:

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL23 is a PFO seep along the base of the west canal (WL21) bank dominated by black willow. This wetland is connected to a PEM with open water and cattail fringe, and ultimately drains into the Rio Grande via a series of linear wetlands.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

<u>SE(</u>	CTION I: BACKGROUND INFORMATION
A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL22
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Santa Maria Center coordinates of site (lat/long in degree decimal format): Lat. 26 3' 16.328"° N, Long. 97 49' 51.632"° N. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grander Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: Field Determination. Date(s): 12/17/07
SEC A.	<u>CTION II: SUMMARY OF FINDINGS</u> RHA SECTION 10 DETERMINATION OF JURISDICTION.
	waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the lew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.

2. Non-regulated waters/wetlands (check if applicable):3

Elevation of established OHWM (if known):

c. Limits (boundaries) of jurisdiction based on: Not Applicable.

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL22 is an upland cut ditch maintained strictly for the purposes of agriculture, without wetland fringe. Although there are wetland plant species along the banks, they are not of sufficient density to meet the hydric

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

vegetation criteria in the 1987 manual. The vegetation or soils do not meet the criteria in the 1987 manual for WL22 to be classified as a wetland.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

ı.	Identify TNW:	
	Summarize rationale supporting determination:	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OIIWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. ⁷ Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): Mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): Mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: survey to available datum; jurisdiction (check all that apply): mean High Water Mark indicated by: jurisdiction (check all that apply): jurisdiction (check all th
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Biol	ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
			General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain:PEM/PSS. Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: attify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

	For	each	wetland,	specify	the	following
--	-----	------	----------	---------	-----	-----------

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	TNWs: linear feet width (ft), Or, acres.
	Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial: WL22 is a persistently flooded agricultural canal whose water depth is maintained by control structures.
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are
	jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows
	seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3. Nor	n-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
Pro	vide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4. We	tlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
Pro	vide acreage estimates for jurisdictional wetlands in the review area: acres.
5. We	tlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
Pro	vide acreage estimates for jurisdictional wetlands in the review area: acres.
6. We	tlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
Pro	vide estimates for jurisdictional wetlands in the review area: acres.
	boundments of jurisdictional waters. a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DEGRA SUCH V whice from whice Inter	TED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY VATERS (CHECK ALL THAT APPLY): 10 the are or could be used by interstate or foreign travelers for recreational or other purposes. It which fish or shellfish are or could be taken and sold in interstate or foreign commerce. It has a contract the are or could be used for industrial purposes by industries in interstate commerce. It is isolated waters. Explain: Explain:
Identify	water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.		
	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).		
fring	Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): Upland cut ditch maintained strictly for the purposes of agriculture, without wetland e.		
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.		
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.		
SECTION IV: DATA SOURCES.			
	UPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/dclineation report.		
	☐ Office does not concur with data sheets/delineation report. ☐ Data sheets prepared by the Corps: ☐ Corps navigable waters' study: ☐ U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☐ USGS NHD data.		
	 ☑ USGS 8 and 12 digit 1IUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Santa Maria. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☑ National wetlands inventory map(s). Cite name: Santa Maria, TX. ☑ State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. ☑ Other (Name & Date): 		
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):		

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL22 is the continuation of WL 21 with a vegetated fringe dominated by Guinea grass and Arundo donax, but also including black willow, Phragmites, and Sporobolus criptandra. This canal connects to the Rio Grande (to the south) and north to WL21. The vegetation or soils do not meet the criteria in the 1987 manual for WL22 to be classified as a wetland.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC	CTION I: BACKGROUND INFORMATION
A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL21
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Santa Maria Center coordinates of site (lat/long in degree decimal format): Lat. 26 3' 36.424" N, Long. 97 49' 47.988" Universal Transverse Mercator: Name of nearest waterbody: Rio Grande
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/17/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	we are a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	I. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): 1 TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres

c. Limits (boundaries) of jurisdiction based on: Not Applicable,

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL21 is an upland cut ditch maintained strictly for the purposes of agriculture, without wetland fringe. The vegetation or soils do not meet the criteria in the 1987 manual for WL21 to be classified as a wetland.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:	
	Summarize rationale supporting determination: .	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition multiple observed or predicted flow events abrupt change in plant community other (list):
		☐ Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: ntify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Biol	ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racte	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain:PEM/PSS. Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: tracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: PickeList proximately () acres in total are being considered in the cumulative analysis.

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For	each	wetland	enecify	the	following:	
ror	eacn	welland.	SDECIIV	ıne	TOHOWINE:	

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- I. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS, THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

۱.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: WL21 is a persistently flooded agricultural canal whose water depth is maintained by control structures. Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU C	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ontify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
fring	Other: (explain, if not covered above): Upland cut ditch maintained strictly for the purposes of agriculture, without wetland .52 acres).
	wide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource:
	Wetlands: acres. wide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such adding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	ON IV: DATA SOURCES.
	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report.
	☐ Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. ☐ USGS NHD data.
	 ☑ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:15,000; Santa Maria. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Santa Maria, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☑ Acrial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or ☐ Other (Name & Date):
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL21 is an agricultural canal excavated from uplands with a vegetated fringe dominated by Guinea grass and Arundo donax, but also including black willow, Phragmites, and Sporobolus criptandra. This canal connects to the Rio Grande (to the south) via WL22.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL20
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: San Pedro Center coordinates of site (lat/long in degree decimal format): Lat. 25 57' 56.697"° N, Long. 97 35' 36.687"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: Field Determination. Date(s): 12/15/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 2.65 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports insterstate commerce and historically supported commercial vessel traffic. Considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL20 is a levee-side ditch and located approximately 800' from the Rio Grande (at Barreda Pump Bend). WL20 flows into another levee-side ditch (to the east of WL20) that flows directly into the river.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Pick List Watershed size: Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
		☐ High Tide Line indicated by: ☐ oil or scum line along shore objects ☐ tine shell or debris deposits (foreshore) ☐ physical markings/characteristics ☐ tidal gauges ☐ other (list): ☐ Mean High Water Mark indicated by: ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: tracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: httfy specific pollutants, if known:

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
Ibid.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain:PEM/PSS. Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: uracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: utify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For	each	wetland.	specify	the	foll	owing:
LOI	eacii	welland.	Specify	me	TOTE	UWIIIE.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 2.65 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres.
	Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary i seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C. Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C. Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	### TION IV: DATA SOURCES. ### SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; West Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX.
	National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs:

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL20 is a levee-side ditch and located approximately 800' from the Rio Grande (at Barreda Pump Bend). WL20 flows into another levee-side ditch (to the east of WL20) that flows approximately 1,000' and directly into the river.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

4.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL19
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: San Pedro Center coordinates of site (lat/long in degree decimal format): Lat. 25 57' 52.593° N, Long. 97 35' 15.063"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande River Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: Field Determination. Date(s): 12/15/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
revi	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the lew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): □ TNWs, including territorial seas □ Wetlands adjacent to TNWs □ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs □ Non-RPWs that flow directly or indirectly into TNWs □ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs □ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs □ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs □ Impoundments of jurisdictional waters □ Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.50 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande River supports insterstate commerce and historically supported commercial vessel traffic. Considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL19 is a depressional feature immediately landward of a levee and located approximately 800' from the Rio Grande (at Barreda Pump Bend). WL19 is contiguous to a levee-side ditch (to the west of WL19) that flows directly into the river.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions: Pick List Watershed size: Pick List Drainage area: Average annual rainfall: inches inches Average annual snowfall: (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. ☐ Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

^{*} Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment sorting sediment sorting sediment community destruction of terrestrial vegetation the presence of wrack line sediment sorting sedim
		·
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): Iligh Tide Line indicated by:
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: ntify specific pollutants, if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Simple of the convironmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain:PEM/PSS. Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics: .
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 0.50 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain. if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SE(CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. ✓ USGS 8 and 12 digit HUC maps.
	U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; West Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Acrial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL19 is a PFO wetland that transitions into a larger PEM wetland containing open water with a cattail fringe. WL19 is a depressional feature immediately landward of a levee and located approximately 800' from the Rio Grande (at Barreda Pump Bend). WL19 is contiguous to a levee-side ditch (approximately 50' to the west of WL19) that flows directly into the river.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL18
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 53' 30.707" N, Long. 97 29' 23.267" W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/15/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.02 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

I. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande River supports insterstate commerce and historically supported commercial vessel traffic. Considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL18 is located approximately 3000' from the Rio Grande in Lozano Banco. Both Lozano Banco and the adjacent Fort Brown Resaca (between WL18 and the river) are located in the historic floodplain of the river.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Description: Tributary has (check all that apply): the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting multiple observed or predicted flow events abrupt change in plant community
		☐ Discontinuous OHWM. ⁷ Explain: .
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc. Explain: ntify specific pollutants. if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List . Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: uracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants. if known:
	(iii)		logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 0.02 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; East Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s):
	 U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; East Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs:

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL18 is a small PEM/PSS wetland characterized by black willow, sandbar willow, Arundo, and Rubus. It is associated with Lozano Banco (within 150') and Fort Brown Resaca (approximately 1000' and between WL18 and the Rio Grande). The wetland appears to be acting as a stormwater retention facility and is located adjacent to and separated from the Rio Grande by a levee whose top elevation is above the 100-year floodplain.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL17
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 53'20"° N, Long. 97 30' 35"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/15/07
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the lew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	I. Waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required] I. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	lsolated (interstate or intrastate) waters, including isolated wetlands b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres.
	Wetlands: acres.

Non-regulated waters/wetlands (check if applicable):3

Elevation of established OHWM (if known):

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL17 lies landward of waters of the US (Rio Grande) beyond 2 man-made barriers (1 road [90' to east] and 1 levee [180' to cast]), both of which are above the 100-yr floodplain and neither have pipes or culverts linking WLI7 to

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

the nearest waterbody (Rio Grande, 500' to east). The area is surrounded by dirt roads with no obvious connection to waters of the US. The conditions present during the field survey were observed to be the normal circumstance (present for at least 5 years).

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:	
	Summarize rationale supporting determination:	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

	Watershed size:	Pick List
	Drainage area:	Pick List
	Average annual rainfa	ll: inches
	Average annual snowf	fall: inches
(ii)	Physical Characteris	tics:
. ,	(a) Relationship with	ı TNW:
	Tributary flov	vs directly into TNW.
		vs through Pick List tributaries before entering TNW.
	Project waters are	e Pick List river miles from TNW.
	Project waters are	e Pick List river miles from RPW.
	Project waters are	e Pick List aerial (straight) miles from TNW.
	Project waters are	e Pick List aerial (straight) miles from RPW.
		oss or serve as state boundaries. Explain: .
	Identify flow rou	te to TNW ⁵ :
	Tributary stream	

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM6 (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):
	☐ Discontinuous OHWM. ⁷ Explain: .
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): Iligh Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; survey to available datum; physical markings/characteristics physical markings/characteristics vegetation lines/changes in vegetation types.
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Visical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics: .
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For	each	wetland.	specify	the	following	ıα·
COL	Cacii	WCHallu.	SDCCIIV	HIE	101103311	124.

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	 RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shelllish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
lde	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		ride estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): WL17 lies landward of waters of the US (Rio Grande River) beyond 2 man-made
		(1 road and 1 levee), both of which are above the 100-yr floodplain and neither have pipes or culverts linking WL17 to the vaterbody (Rio Grande River). The area is surrounded by dirt roads with no obvious connection to waters of the US.
	facto	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: 0.02 acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres.
		Other non-wetland waters: acres. List type of aquatic resource: Wetlands: 0.02 acres.
SEC	TIO	N IV: DATA SOURCES.
A. S	and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant.
	_	☐ Office concurs with data sheets/delineation report. ☐ Office does not concur with data sheets/delineation report.
	\exists	Data sheets prepared by the Corps: Corps navigable waters' study:
	\boxtimes	U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data.
	\boxtimes	☑ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; West Brownsville.
		USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s): FEMA/FIRM maps:
		100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Aerial (Name & Date): NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or ☐ Other (Name & Date):
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law:
		Applicable/supporting case raw: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetland is a small isolated PEM wetland near the Amigoland pumphouse. There is no evidence of proximity or hydrological connection, and WL17 meets the criteria of the Two-barrier Rule (Galveston District Policy

Number 01-001). WL17 is isolated from waters of the US (Rio Grande) beyond 2 man-made barriers (1 road and 1 levee), both of which are above the 100-yr floodplain and neither have pipes or culverts linking WL3 to the nearest waterbody (Rio Grande), and surrounded on the other 3 sides by dirt roads.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL50
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Starr City: Roma Center coordinates of site (lat/long in degree decimal format): Lat. 26 24' 49"° N, Long. 99 2' 23"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 01/09/08 Field Determination. Date(s):
	<u>CTION II: SUMMARY OF FINDINGS</u> RHA SECTION 10 DETERMINATION OF JURISDICTION.
revi	ere Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the lew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):

Non-regulated waters/wetlands (check if applicable):3

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL50 is a deeply incised erosional feature with ephemeral flows directly into the Rio Grande. WL50 encompasses 0.56 acre within the review area. There is no identifiable OHW mark and water flows less frequently

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

than seasonal (3 months). The soils mapped at the location (Jimenez-Quemado association) are not hydric and the location does not meet the criteria in the 1987 manual for WL50 to be classified as a wetland.

SECTION III: CWA ANALYSIS

B.

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:
	Summarize rationale supporting determination:
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":
CH	ARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i)	General Area Conditions:		
	Watershed size: Pick List		
	Drainage area: Pick List		
	Average annual rainfall: inches		
	Average annual snowfall: inches		
(ii)	Physical Characteristics:		
(,	(a) Relationship with TNW:		
	Tributary flows directly into TNW.		
	Tributary flows through Pick List tributaries before entering TNW.		
	Thoulary nows through Fick List thoulands before entering 114.		
	Project waters are Pick List river miles from TNW.		
	Project waters are Pick List river miles from RPW.		
	Project waters are Pick List aerial (straight) miles from TNW.		
	Project waters are Pick List aerial (straight) miles from RPW.		
	Project waters cross or serve as state boundaries. Explain:		
	Identify flow route to TNW ⁵ :		
	Tributary stream order, if known:		

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition sediment deposition water staining water staining other (list):
	☐ Discontinuous OHWM. ⁷ Explain: .
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics tidal gauges other (list):
Cha	emical Characteristics: tracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: httfy specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷lbid.

	(iv)	Bio	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:		
2.	Cha	Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW			
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:		
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:		
			Surface flow is: Pick List Characteristics:		
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:		
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:		
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.		
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:		
	(iii	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:		
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis.		

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.			
 RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating tributary is perennial: 				
	Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:			

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shelllish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: other factors. Explain:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
thar	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): WL50 is a deeply incised erosional feature with ephemeral flows directly into the Rionde. WL50 encompasses 0.56 acre within the review area. There is no identifiable OHW mark and water flows less frequently seasonal (3 months). The soils mapped at the location (Jimenez-Quemado association) are not hydric and the location does not the criteria in the 1987 manual for WL50 to be classified as a wetland.
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: 0.14acres. List type of aquatic resource: Dry wash with ephemeral flows. Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. 5	BUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Roma-Los Saenz West. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Roma-Los Saenz West, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
	or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL50 is a deeply incised dry wash with ephemeral (less than 3 months per year and less than 5 cfs) flows to the Rio Grande. WL50 encompasses 0.56 acre within the project assessment area.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEO A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):		
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL49		
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Starr City: Roma Center coordinates of site (lat/long in degree decimal format): Lat. 26 24' 47"° N, Long. 99 2' 28"° W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.		
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: 01/09/08 ☐ Field Determination. Date(s):		
	CTION II: SUMMARY OF FINDINGS		
А.	RHA SECTION 10 DETERMINATION OF JURISDICTION.		
rev	wre Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: CWA SECTION 404 DETERMINATION OF HUNEDICTION.		
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.		
The	re Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]		
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands		
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres.		
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):		
	2. Non-regulated waters/wetlands (check if applicable): ³		

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL49 is a deeply incised erosional feature with ephemeral flows directly into the Rio Grande. WL49 encompasses 0.14 acre within the review area. There is no identifiable OHW mark and water flows less frequently

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

than seasonal (3 months). The soils mapped at the location (Jimenez-Quemado association) are not hydric and the location does not meet the criteria in the 1987 manual for WL49 to be classified as a wetland.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1.	TNW Identify TNW:
	Summarize rationale supporting determination:
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

(.,	, denotation conditions.			
	Watershed size: Pick 1	List		
	Drainage area: Pick I	List		
	<u>C</u>	inches		
	Average annual snowfall:			
(ii)	i) Physical Characteristics:			
(,	(a) Relationship with TNW	•		
	Tributary flows dire	•		
	☐ Tributary flows thro	ugh Pick List tributaries before entering TNW.		
	Project waters are Pick	List river miles from TNW.		
	3	List river miles from RPW.		
	3	List aerial (straight) miles from TNW.		
		List aerial (straight) miles from RPW.		
	Project waters cross or	serve as state boundaries. Explain: .		
	Identify flow route to T	NW ⁵ ·		
	Tributary stream order,			
	Thoutary Stream order,	II KIIOWII.		

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting multiple observed or predicted flow events abrupt change in plant community other (list):
		☐ Discontinuous OHWM. ⁷ Explain: .
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): Iligh Tide Line indicated by:
(iii)	Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv)		ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racte	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics:
			Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Chai	mical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: tify specific pollutants, if known:
	(iii)		ogical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List roximately () acres in total are being considered in the cumulative analysis.

For	anch	wetland.	consify	tha fo	Hawina:
ror	eacn	wettand.	Specify	the to	nowing:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary i seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Idei	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	<u> </u>	vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	\boxtimes	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
freq	⊠ Grai uent	Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): WL49 is a deeply incised erosional feature that intermittently flows directly into the nde. WL49 encompasses 0.14 acre within the review area. There is no identifiable OHW mark and water flows less ly than seasonal (3 months). The soils mapped at the location (Jimenez-Quemado association) are not hydric and the does not meet the criteria in the 1987 manual for WL49 to be classified as a wetland.
	fact	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional
	`□	ment (check all that apply): Non-wetland waters (i.e., rivers, streams): Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource:
		Wetlands: acres.
		vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such adding is required for jurisdiction (check all that apply):
		Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres.
		Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	TIC	ON IV: DATA SOURCES.
A. S		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked
		requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant.
		Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report.
		Data sheets prepared by the Corps: Corps navigable waters' study:
	Ø	U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
	M	USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Roma-Los Saenz West.
		USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Roma-Los Saenz West, TX.
		State/Local wetland inventory map(s): FEMA/FIRM maps:
		100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
		Photographs: ☐ Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or ☐ Other (Name & Date):
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law:
		Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL49 is a deeply incised dry wash with intermittent (less than 3 months per year and less than 5 cfs) to the Rio Grande. WL49 encompasses 0.14 acre within the project assessment area.					
•					

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL48
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Starr City: Roma Center coordinates of site (lat/long in degree decimal format): Lat. 26 24' 45" N, Long. 99 2' 30" W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090001 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ○ Office (Desk) Determination. Date: 01/09/08 □ Field Determination. Date(s):
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	 b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual
	Elevation of established OHWM (if known):

A Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL48 is a deeply incised erosional feature that intermittently flows directly into the Rio Grande. WL48 encompasses 0.28 acre within the review area. There is no identifiable OHW mark and water flows less frequently than

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

Non-regulated waters/wetlands (check if applicable):3

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

seasonal (3 months). The soils mapped at the location (Jimenez-Quemado association) are not hydric and the location does not meet the criteria in the 1987 manual for WL48 to be classified as a wetland.

SECTION III: CWA ANALYSIS

1 TNW

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

	Identify TNW:
	Summarize rationale supporting determination:
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope):
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM! (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wrack line sediment sorting vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition multiple observed or predicted flow events abrupt change in plant community other (list):
	☐ Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics tidal gauges other (list): vegetation lines/changes in vegetation types.
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

	(iv)	Biol	ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	racte	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httfy specific pollutants, if known:
	(iii)	Biol	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: PickEist proximately () acres in total are being considered in the cumulative analysis.

For	each	wetland.	specify t	he	fol1	owing.
U	Cacii	wettand,	Specify (.110	1011	OWINE.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

l.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a 1NW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SU(CLATED INTERSTATE OR INTRA-STATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain: Other factors. Explain:

E.

^{*}See Footnote # 3.

9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
Rio freq	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above): WL48 is a deeply incised erosional feature that intermittently flows directly into the Grande. WL48 encompasses 0.28 acre within the review area. There is no identifiable OHW mark and water flows less uently than seasonal (3 months). The soils mapped at the location (Jimenez-Quemado association) are not hydric and the tion does not meet the criteria in the 1987 manual for WL48 to be classified as a wetland.
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A. S	BUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report.
	 □ Data sheets prepared by the Corps: □ Corps navigable waters' study: □ U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. □ USGS NHD data. □ USGS 8 and 12 digit HUC maps.
	 U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Roma-Los Saenz West. U.S. DA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Roma-Los Saenz West, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs:
	Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL48 is a deeply incised dry wash with intermittent (less than 3 months per year and less than 5 cfs) to the Rio Grande. WL48 encompasses 0.28 acre within the project assessment area.		

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL47
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 53' 30.855" N, Long. 97 27' 55.012" W. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/20/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	The Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): □ TNWs, including territorial seas □ Wetlands adjacent to TNWs □ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs □ Non-RPWs that flow directly or indirectly into TNWs □ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs □ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs □ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs □ Impoundments of jurisdictional waters □ Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 1.82 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

I. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. The Rio Grande is considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL47 is located in Jeronimo Banco, on the landward side of a levee and approximately 1,000' feet from the Rio Grande. Jeronimo Banco is located within the historic floodplain of the river. WL47 has been impacted within the past 20 years by excavation, presumably for borrow material (the majority of the system is open water with a straight-sided shoreline).

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions:

Pick List Watershed size: Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: .
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM6 (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving barber the presence of wack line sediment sorting sediment deposition matted down, bent, or absent leaf litter disturbed or washed away sediment deposition matter deposition matter deposition matter deposition matter deposition matter deposition matter deposition multiple observed or predicted flow events abrupt change in plant community other (list):
		•
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide I ine indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics tidal gauges other (list): vegetation lines/changes in vegetation types.
(iii)		emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷ Ibid.

Identify specific pollutants, if known:

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain:PEM/PSS. Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants. if known:
	(iii) Bio	Riparian buffer. Characteristics (type, average width): Vegetation type-percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

For each	wetland	specify the	following	ъ.
ror eacn	wenana.	Specify me	TOHOWIRS	2:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- I. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

I.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs. 1.82 acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
	Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	DLATED INTERSTATE OR INTRA-STATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes.
	from which fish or shellfish are or could be taken and sold in interstate or foreign commerce, which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
lde	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CW.V. jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	facto judg	wide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such iding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTIO	NIV: DATA SOURCES.
Α.		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
		 ☑ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; East Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: ☐ Acrial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
		or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL47 is a borrow pit along side the levee adjacent to the floodplain of the Rio Grande. The system is a POW with a PSS PEM fringe dominated by Schinus terebinthifolius, sand bar willow, Andropogon glomeratus, and Arundo donax. Review of aerial photographs from 2004 indicate that WL47 had not yet been excavated. Therefore, the conditions observed during the field review are not normal circumstances (existing for the past 5 years).

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL46
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 53' 37.691"° N, Long. 97 27' 55.24"° N. Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Rio Grande River Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 12/20/07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	I. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: 0.27 acres.
	c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Rio Grande.

Summarize rationale supporting determination: Rio Grande supports interstate commerce and historically supported commercial vessel traffic. The Rio Grande is considered by the Corps of Engineers to be navigable up to Valverde County, Texas.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": WL46 is located in Jeronimo Banco, on the landward side of a levee and approximately 2,000' feet from the Rio Grande. Jeronimo Banco, including WL46, is located within the historic floodplain of the river.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

^{*} Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

	Identify flow route to TNW ⁵ : Tributary stream order, if known:
(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OIIWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition sediment deposition multiple observed or predicted flow events abrupt change in plant community other (list): Discontinuous OHWM. Explain:
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide I ine indicated by: oil or seum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:
Iden	tify specific pollutants, if known;

(iii)

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
An antural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
It is a province of the control of the culvert of

	(iv)	Bio!	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	aract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		vsical Characteristics:
		(a)	General Wetland Characteristics: Properties:
			Wetland size: acres
			Wetland type. Explain:PEM/PSS.
			Wetland quality. Explain: .
			Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List
			Characteristics:
			Subsurface flow: Pick List Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW:
			Directly abutting
			☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain:
			Ecological connection. Explain:
			Separated by berm barrier. Explain:
		(d)	Proximity (Relationship) to TNW
			Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW.
			Flow is from: Pick List.
			Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics:
	(11)		aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed
			characteristics: etc.). Explain:
		Ide	ntify specific pollutants. if known:
	(iii) Bio	logical Characteristics. Wetland supports (check all that apply):
	`		Riparian buffer. Characteristics (type, average width):
			Vegetation type/percent cover. Explain:
		Ш	Habitat for:
			Federally Listed species. Explain findings: Fish/spawn areas. Explain findings:
			Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
3.	Ch	aract	teristics of all wetlands adjacent to the tributary (if any)
٠.	Cili		wetland(s) being considered in the cumulative analysis: Pick List
			proximately () acres in total are being considered in the cumulative analysis.

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW.

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- I. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

l.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: 0.27 acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain Other factors. Explain: ontify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section HLD.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	vide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.		N-JURISDICTIONAL WATERS. INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR cors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Pro a fir	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a noting is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streums): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets at lineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. USGS NHD data. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:15,000; East Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. National wetlands inventory map(s). Cite name: Brownsville, TX. State/Local wetland inventory map(s). FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352. or Other (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.
		Previous determination(s). File no, and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL46 is a PFO/PEM wetland that is separated from the Rio Grande by a levee that is above the 100-year floodplain. However, Jeronimo Banco (where WL46 is located) is part of the historic river floodplain. Direct hydrological connection with the river was and evident during the site review, but there is only one barrier (levee) that separates WL46 from

the Rio Grande; therefore supporting WL46 αs adjacent to a TNW, verde.	The dominant vegetation within this wetland is Arundo donax, and pale

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

Α.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston, SWG-2008-0040, WL45
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish: borough: Cameron City: Brownsville Center coordinates of site (lat/long in degree decimal format): Lat. 25 53' 17.11" N, Long. 97 27' 16.096 Universal Transverse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite not gation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE FYALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: Field Determination. Date(s): 12 20 07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territornal seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or acres. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Not Applicable.

Elevation of established OHWM (if known):

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL45 is an upland cut ditch maintained strictly for the purposes of agriculture, without wetland fringe.

SECTION I: BACKGROUND INFORMATION

Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a trabutary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section 111 F.

SECTION III: CWA ANALYSIS

B.

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

I.	TNW Identify TNW:	
	Summarize rationale supporting determination: .	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	
СН	ARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):	
	This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.	

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(h) (c) 11.

(1)	General Area Conditions:
	Watershed size: Pick List
	Drainage area: Pick List
	Average annual rainfall: mehes
	Average annual snowfall: inches
(ii)	Physical Characteristics:
	(a) Relationship with TNW:
	☐ Tributary flows direct into TNW.
	Tributary flows through Pick List tributaries before entering TNW.
	Project waters are Pick List river miles from TNW.
	Project waters are Pick List river miles from RPW.
	Project waters are Pick List aerial (straight) miles from TNW.
	Project waters are Pick List aerial (straight) miles from RPW.
	Project waters cross or serile as state boundaries. Explain:
	Identify flow route to TNW:
	Tributary stream order, if known:
	Tributary stream order. I. Mooni.

A Note that the Instructional Guidebook contains a demonal information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Chara teristics (check all that apply): Tributary is:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slope: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain.
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime. Other information on duration and volume:
	Surface flow is: Pick List. Characteristics: .
	Subsurface flow: Pick List. Explain findings: Dye (or other) 'est performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural time impressed on the bank changes in the character of soil shelving to epitection character down, bent, or absent leaf litter of turbed or washed away sediment deposition sediment deposition water staining other (list) Tributary has (check all that apply): the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting secure multiple observed or predicted flow events abrupt change in plant community other (list)
	☐ Discontinuous · HWM. Explain: .
	If factors other than the OffWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Mean High Water Mark indicated by: survey to available datum; physical markings/characteristics physical markings/characteristics tidal gauges other (list) vegetation lines/changes in vegetation types.
Cha	emical Characteristics: tracterize tributary (e.g., voter color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: tify specific pollutants, it known:

(iii)

⁶A natural or man-made discontinuity in the OFF Volocs not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or accountural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Third.

	(iv)	Bio	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	aract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relations at with Non-TNW: Flow is: Pick List Exp and Surface flow is: Pick List Characteristics: Subsurface flow: Pick List Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetlan! hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by been barrier. Explain:
		(d)	Proximity (Relationshi: 1 INW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Faciliain: attify specific pollutants, if h. gwn:
	(iii		logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. http://infindings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

-			. 1	
For each	ch wetland	. specify	th : foll	lowing:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guideanak. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, ne disc spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of consideration—is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Sec ioi. III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDIC TIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

l .	TNWs and Adjacent Wetlands. Theek all that apply and provide size estimates in review area: TNWs: linear feet with the (ft), Or, acres. Wetlands adjacent to TNWs. acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where talket aries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters.
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNV or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdiction (waters within the review area (check all that apply): Tributary waters: .inear feet width (ft). Other non-wetland waters: acres. Identify type(s) of vinters: .
4.	Wetlands directly abutting an EPW that flow directly or indirectly into TNWs. □ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. □ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B at 3 rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jury affectional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly alone an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated a basent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Settle (III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent everlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wedlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meet the criteria for one of the categories presented above (1-6), or Demonstrate that water is is cated with a nexus to commerce (see E below).
DE SU	DEMONSTRATE OR INTRA-STATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTIONS OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL FE AT APPLY): 10 which are or could be used by internate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be used for and extra all purposes by industries in interstate commerce. which are or could be used for and extra all purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section 21 D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiation based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	D.	ride estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres Identify type(s) of waters: . Wetlands: acres.
		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MB2)
with	∐ ⊠ out	Waters do not meet the "Significatal Jexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above; WL45 is an upland cut ditch maintained strictly for the purposes of agriculture, wetland fringe (0.80 acres).
	facto	vide acreage estimates for non-jury dictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional greent (check all that apply):
		Non-wetland waters (i.e., rivers, streems): linear feet width (ft). Lakes/ponds: acres Other non-wetland waters: ceres. List type of aquatic resource:
		Wetlands: acres.
		vide acreage estimates for non-juri dictional waters in the review area that do not meet the "Significant Nexus" standard, where such iding is required for jurisdiction achieved all that apply):
		Non-wetland waters (i.e., rivers, attenties): linear feet, width (ft). Lakes/ponds: acres.
		Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	TIO	NIV: DATA SOURCES.
A. 5	SUPI	PORTING DATA. Data reviewe the r JD (check all that apply - checked items shall be included in case file and, where checked
	and	requested, appropriately reference ourses below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
	\boxtimes	Data sheets prepared/submitted by or on behalf of the applicant/consultant.
		Office concurs with data sheets defineation report. Office does not concur with data sheets/delineation report.
		Data sheets prepared by the Corp Corps navigable waters' study
	\boxtimes	U.S. Geological Survey Hydrological statistical wild statistical statistical statistics and the statistical statistics of the statistical statistics and the statistical statistics and the statistics and the statistics and the statistics and the statistics are statistically statistical statistics.
		☐ USGS NHD data. ☐ USGS 8 and 12 digit HUC maps.
	X	U.S. Geological Survey map(s) Cate scale & quad name: 1:24,000; East Brownsville. USDA Natural Resources Conservation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
	×	National wetlands inventory map) Cite name: Brownsville, TX.
		State/Local wetland inventory mass as: FEMA/FIRM maps:
		100-year Floodplain Elevation is (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352
		or Other (Name & Date): Previous determination(s): File not and date of response letter:
		Applicable/supporting ca. e law Applicable/supporting scientific Executors:
	П	Other information (please specify

B. ADDITIONAL COMMENTS TO SUPPORT JD: WL45 is a maintained upland cut ditch adjacent to a levee. The ditch originates along residential land use, progresses appear intactly 200' towards the toe of the levee (for the Rio Grande River), makes a 90 degree bend

and progresses along the toe of the levee for ser eral hundred feet and terminates. Schinus terebinthifolius, and Panieum virge and.	Dominant vegetation includes Leucana leucocephala,

APPI OVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME. AND NUMBER: Galveston, SWG-2008-0040, WL44
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County parish berough: Cameron City: Encantada Center coordinates of site (lat long in decree decimal format): Lat. 26 2' 28.525" N, Long. 97 40' 27.332" N. Univers in manyerse Mercator: Name of nearest waterbody: Rio Grande Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rio Grande Name of watershed or Hydrologic Unit Code (HUC): Lower Rio Grande, Texas; 13090002 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite and aution sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: Field Determination. Date(8): 12 19 07
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the form within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flex of the tide. Waters are presently used, or lay the en used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are no "waters of the U.S." within Clean. Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territ rid seas Wetlands adjacent to 1 kWs Relatively permanent vaters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly all out n. RPWs that flow directly or indirectly into TNWs Wetlands adjacent to be root directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to n. n-RPWs that flow directly or indirectly into TNWs Impoundments of jurist tectional waters Isolated (interstate or in the tate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: distract Cet: width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Not Applicable. Elevation of established OHWM icknown):
	2. Non-regulated waters, wetlands (check if applicable): ³ Potentially jurisdictional water and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: WL44 is an uplanded, ditch maintained strictly for the purposes of agriculture, without wetland fringe. The

¹ Boxes checked below shall be supported by a confirming the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined a continuous that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section 1.4 F.

site lacked wetland vegetation and the banks are regularly mowed, the 1987 manual for $WL4c$ to be classified as a wetland.	The vegetation or soils do not meet the criteria in

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.D.1. nij; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see ection III.B below.

1.	TNW Identify TNW:	
	Summarize rationale supporting cereamination: .	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

B. CHARACTERISTICS OF TRIBUTIARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the stand; rds for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly aboves an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but the teles not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, not a rectland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any or site wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

I. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions:

Watershed size: Pick List Drainage area: Pick ...ist Average annual rainfall: inches Average annual snowfull inches (ii) Physical Characteristics: (a) Relationship with 1 3V Tributary flows linest into TNW. Tributary flows the complete List tributaries before entering TNW. Project waters are Pier List river miles from TNW. Project waters are Piel. List river miles from RPW. Project waters are Piel List aerial (straight) miles from TNW. Project waters are Piel List aerial (straight) miles from RPW. Project waters cross and as state boundaries. Explain: **Identify** flow route to 1857%: Tributary stream order it hown:

⁴ Note that the Instructional Guidebook centariant nonal information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying. From the buttery a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	eneral Tributory Chur teteristics (check all that apply): ributary is: Neural N
	ributary properties it respect to top of bank (estimate): Average width: feet Average depth: feet Average side siop strick List.
	rimary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Beditack Vegetation. Type/% cover: Other, Explair
	ributary condition—tasifav [e.g., highly eroding, sloughing banks]. Explain: resence of run riffle pool complexes. Explain: ributary geometry—Pick List ributary gradient (apple mate average slope):
(c)	ow: ributary provides for: Pick List stimate average number of flow events in review area/year: Pick List Describe flow regument ther information on the non and volume:
	urface flow is: Pick Elst. Characteristics: .
	ubsurface flow: Pick List Explain findings: Dye con other to performed:
	ributary has celected a most apply): Bed and I band. OHWM (clue Vali indicators that apply): clear, name of line impressed on the bank the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line shelving the presence of wrack line sediment sorting sediment sorting sediment sorting sediment sediment sorting sediment sediment sorting multiple observed or predicted flow events water star in abrupt change in plant community other Cist Discontinuous Of WM. Explain:
	factors other than the OERWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Fide 1 carsticated by: Mean High Water Mark indicated by: survey to available datum; physical markings; physical markings/characteristics vegetation lines/changes in vegetation types.
Cha	ical Characteristics: sterize tributary (e.g., v., or color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) splain: y specific poliutanus (for lown:

(iii)

⁶A natural or man-made discontinuity is the OEVV. Toes not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development in a cicultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop is that the circultural practices will look for indicators of flow above and below the break. Third.

	(iv)	Biol	logical Characteristics. Channel supports (check all that apply): Riparian corridor. Chalasteristics (type, average width):
			Wetland fringe. Chara teristics: .
			Habitat for:
			Federally Listed spicies. Explain findings: Fish/spawn areas. Explain findings:
			Other environment: Tys sensitive species. Explain findings:
			Aquatic/wildlife do en ity. Explain findings:
2.	Cho	ract	eristics of wetlands adviscent to non-TNW that flow directly or indirectly into TNW
4.	Clia		
	(i)		vsical Characteristics: <u>General Wethard Characteristics:</u>
		(a)	Property :
			Wetland's Communication
			Wetland type. Fxp and the control of
			Wetland quidity ! : n: . Project to the decrease and a second project Evaluation.
			Project wetla : Is mose in three as state boundaries. Explain:
		(b)	General Flow Reliatio 1. vith Non-TNW:
			Flow is: Pick List. 19 June 19 19
			Surface flow . : Pick Cls.
			Character, das
			Subsurface flow Piel 12 Explain findings:
			Dye (o biliter) at arformed:
		(c)	Wetland Adjustiney 12 syndination with Non-TNW:
			Directly ainting
			☐ Not directly abuiting ☐ Discrete wetten Haydrologic connection. Explain:
			Feological control Explain:
			Separate by the barrier, Explain:
		(d)	Proximity (Relations). : · [NW]
		` ′	Project wetlands are Pick List river miles from TNW.
			Project waters are Pich List aerial (straight) miles from TNW.
			Flow is from Cick Lie . Estimate application from of wetland as within the Pick List floodplain.
	(ii)	Cho	emical Characteristics: aracterize wethand jeter and water color is clear, brown, oil film on surface; water quality; general watershed
		Clia	characteristics (2000). A count of the color is clear, brown, on min on surface, water quanty, general watershed
		lder	ntify specific politicus of a rown:
	(iii) Bio	logical Characteristics (Newsland supports (check all that apply):
	`		Riparian buffer Characteristics (type, average width):
			Vegetation type perce er. Explain:
		Ш	Habitat for: Federally Listed space Explain findings:
			Fish spaw: nors in findings:
			Other environment of sensitive species. Explain findings:
			Aquatic/wildlife drop av. Explain findings:
3.	Cha		teristics of all wetland: of cent to the tributary (if any)
			wetland(s) being constant. In the cumulative analysis: Pick List
		App	proximately (and the control are being considered in the cumulative analysis.

Directly abuts (Y N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overail bi - - ral, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMENTATION

outside of a floodplain is no safely examinative of significant nexus.

A significant nexus analysis will as so the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributery to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its producty to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to a training significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland ween a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or

- TNWs, or to reduce the anasant
- Does the tributary, in combination other species, such as for home
- Does the tributary, in combinant support downstream for the cost.
- Does the tributary in condiminate biological integrity of the NAW

Draw connections between the feat re-documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guid as A. Factors to consider include, for example:

- Does the tributary, in combinate and the stability adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to lutants or flood waters reaching a TNW?
 - its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and spawning, or rearing young for species that are present in the TNW?
 - th its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that
 - th its adjacent wetlands (if any), have other relationships to the physical, chemical, or

Note: the above list of consideration below:

not inclusive and other functions observed or known to occur should be documented

- Significant nexus findlegs for an APW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence.
 - entificant nexus below, based on the tributary itself, then go to Section III.D:
- TNWs. Explain finding of pre- 1 adjacent wetlands, then to to Sc. Ed. III.D:
- Significant nexus findings for an arrange and its adjacent wetlands, where the non-RPW flows directly or indirectly into or absence of significant nexus below, based on the tributary in combination with all of its
- Significant nexus findings for presence or absentated Section III.D:
- ands adjacent to an RPW but that do not directly abut the RPW. Explain findings of us below, based on the tributary in combination with all of its adjacent wetlands, then go to

D. DETERMINATIONS OF JURISIP HERONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetland TNWs: friend net Wetlands adjacent to 1Ws	theck all that apply and provide size estimates in review area: th (ft), Or, acres. acres.
2.	RPWs that flow directly or in a zero Tributaries of a NV and the tributary is perenn	ly into TNWs. aries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	Tributaries of INV where jurisdictional Date to posseasonally:	aries have continuous flow "seasonally" (e.g., typically three months each year) are his conclusion is provided at Section III.B. Provide rationale indicating that tributary flows

	☐ Tributary waters.	the small waters in the review area (check all that apply): Livear feet width (ft).
	Other non-weif and war Identify type: a diwar	
3.	Non-RPWs ⁸ that flow directly ☐ Waterbody that is not a FN TNW is jurisdictional. Dat	andirectly into TNWs. an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a porting this conclusion is provided at Section III.C.
	Provide estimates for just licetic Tributary waters Other non-web rad wa Identify type a col	acres.
4.	Wetlands directly abouting an Wetlands directly so the Wetlands directly so the indicating that embata directly about guar R	end thus are jurisdictional as adjacent wetlands. end RPW where tributaries typically flow year-round. Provide data and rationale cremnial in Section III.D.2, above. Provide rationale indicating that wetland is
		RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is trationale in Section III.D.2, above. Provide rationale indicating that wetland is directly
	Provide acreage estimates for j.	cional wetlands in the review area: acres.
5.	Wetlands adjacent to fint not Wetlands that do not free and with similarly our deal conclusion is provided as	at an RPW, but when considered in combination with the tributary to which they are adjacent and wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this
	Provide acreage Command Company	deles.
6.	Wetlands adjacent to non-RP Wetlands adjacent to non-RP with similarly attract to conclusion is grow to find.	and have when considered in combination with the tributary to which they are adjacent and setlands, have a significant nexus with a TNW are jurisdictional. Data supporting this
	Provide estimates darja in facto	tlands in the review area: acres.
7.	Impoundments of juri-diction As a general rule, the armounds Demonstrate that a ground Demonstrate that a demand Demonstrate that a demand	was created from "waters of the U.S.," or criteria for one of the categories presented above (I-6), or
DE SU	CH WATERS (CI) Ch. Which are or could be used from which fish or well which are or could be used from which are or could be used which are or could be used which are or could be used from the could be used	OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY APPLY): 10 or foreign travelers for recreational or other purposes. If be taken and sold in interstate or foreign commerce. If purposes by industries in interstate commerce.
Ide	ntify water body is a secondari.	male supporting determination:
Foot	note # 3.	
	aloto the analysis within the	11 () / of the fortunational Couldeback

E.

^{*}See Footnote # 3.

To complete the analysis reference the seasons of the Instructional Guidebook.

The Prior to asserting or declining Colors and EPA HQ for review consistent with the process of the Instructional Guidebook.

The Prior to asserting or declining Colors and EPA HQ for corps declining Colors and EPA HQ for Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Tributary w Other non-		mean feet as s	in the review area (check all that apply): width (ft).
F.	Review are Prior "Mig	I wetlanes we Delineation Mea included be to the Jan 2stratory Bird R	receives conditions in selection of the condition of the	NCLUDING WETLANDS (CHECK ALL THAT APPLY): whin the review area, these areas did not meet the criteria in the 1987 Corps of Engineers appropriate Regional Supplements. with no substantial nexus to interstate (or foreign) commerce. Fourt decision in "SWANCC," the review area would have been regulated based solely on the
			e rection e regetations	exus" standard, where such a finding is required for jurisdiction. Explain: Upland cut ditch maintained strictly for the purposes of agriculture, without wetland ad the banks are regularly mowed. The vegetation or soils do not meet the criteria in the etland.
	Provide acreage factors (i.e., pre judgment (chec	esence of mi. k all that app	entre de la companya	ional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR resence of endangered species, use of water for irrigated agriculture), using best professional
	☐ Non-wetla ☐ Lakes/pon ☐ Other non ☐ Wetlands:	ds: acr -wetland wat.	•	s. List type of aquatic resource:
	a finding is req Non-wetla Lakes/pon Other non	uired for jur. ind waters (inds: acr -wetland wat.	Testion	tional waters in the review area that do not meet the "Significant Nexus" standard, where such all that apply): ms): linear feet, width (ft). s. List type of aquatic resource:
<u>SEC</u>	Wetlands:		<u>5</u>	
A. 5	Data sheet ☐ Office ☐ Office ☐ Data sheet ☐ Corps nav ☑ U.S. Geole	appropriately ns, plots in plots ts prepair dist concurs dist does to con- ts prepair dis- igable according yet	Charms In the more discovered and the control of th	r JD (check all that apply - checked items shall be included in case file and, where checked rees below): v or on behalf of the applicant/consultant: on behalf of the applicant/consultant. lineation report. heets/delineation report. tlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
		NHD dr. 1. 8 and 1. digogical Servery stural Resource vetlands or ival wetlands for RM map. Floodpt. 1.1.1	knowe in knowe topone stay of	scale & quad name: 1:24,000; La Paloma. on Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. Cite name: La Paloma, TX. (National Geodectic Vertical Datum of 1929)
	Previous of Applicable Applicable	hs: Acri. or Acri. determinatio e/supporting e/suppng ormation_ple.	Sanac Constitution of the	re):NGA US Mexico Imagery 2004; Series #172320, 172345, 172352.

ponding in places.

)RT JD: WL44 is a maintained upland cut agricultural ditch adjacent to an existing road. At

B. ADDITIONAL COMMEN TO The time of survey, ditch was $n \in \mathbb{N}_2$

VPLOUVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by to Forman the instructions provided in Section IV of the JD Form Instructional Guidebook.

		TION APPROVED HUDISDICTIONAL DETERMINATION (ID).
Α.	REPORT COMPLETION DATE: 15.	APPROVED JURISDICTIONAL DETERMINATION (JD):
В.	DISTRICT OFFICE, FILE NAME	ND NUMBER:Galveston, SWG-2008-0040, WL43
C.	PROJECT LOCATION CALABASE Control plants State: Texas Control plants Center coordinates of site can long or Universe. Name of nearest waterbody (A. 6.1)	AROUND INFORMATION: orough: Cameron City: Los Indios ree decimal format): Lat. 26 2' 30"° N, Long. 97 41' 18"° W. ransverse Mercator:
	Name of nearest Traditional Novigal Name of watershed or Liydrologic 1 in Check if map/diagram of review Check if other site we are different JD form.	ater (TNW) into which the aquatic resource flows: None ode (HUC): Lower Rio Grande Texas; 13090002 and/or potential jurisdictional areas is/are available upon request. gation sites, disposal sites, etc) are associated with this action and are recorded on a
D.	REVIEW PERFORMED FOR S. ☐ Office (Desk) Determ author ☐ Field Determination. Outer ☐	VALUATION (CHECK ALL THAT APPLY):
	CTION II: SUMMARY OF WINDE A	OF JURISDICTION.
	ere Are no "navigable were entre. iew area. [Required]	within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the
	Waters subject to the cibb and I	I the tide. cen used in the past, or may be susceptible for use to transport interstate or foreign commerce.
B.	CWA SECTION 404 DECIMINATION	N OF JURISDICTION.
The	ere Are no "waters of the TINE wither.	Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S a. Indicate preserve of societies of TNWs, a chicking continuous of Wetland and a train a Relatively parameters. Non-RPW of a chicking of Wetland and a continuous of Wetland, according to Wetland, additional to Impound according list and a societies of Impoundation of the continuous of Isolated anter total or	S. in review area (check all that apply): 1 is seas State (RPWs) that flow directly or indirectly into TNWs Ity or indirectly into TNWs RPWs that flow directly or indirectly into TNWs of directly abutting RPWs that flow directly or indirectly into TNWs RPWs that flow directly or indirectly into TNWs anal waters state) waters, including isolated wetlands
	b. Identify (estimate) size of some Non-wetland water Wetlands: do 2	of the U.S. in the review area: feet: width (ft) and/or acres.
	c. Limits (boundaries) of Larisda Elevation of established OTAV's	k based on: Not Applicable, known):
	2. Non-regulated water Avethus Potentially just a ceil of the Explain: W1:13 four appli	and/or wetlands were assessed within the review area and determined to be not jurisdictional. It ditch maintained strictly for the purposes of agriculture, without wetland fringe.
² Fo (e.g	oxes checked below shall be apported by a propose of this form, an analysis and a second state of the propose of this form, and the propose of this form, and the propose of this form, and the propose of the propose o	ting the appropriate sections in Section III below. ributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" ii.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJAC TO TNWs

The agencies will assert jurisdiction er TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III. 3.1 a. v; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, setion III.B below.

TNW

Identify TNW:

Summarize rationale supporting 1 permination:

Wetland adjacent to FNW

Summarize ration: e la postar clusion that wetland is "adjacent":

CHARACTERISTICS OF TRIE

TY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes in figure determine whether or not the ste-

regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps s for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdic. waters" (RPWs), i.e. tributaries the months). A wetland that alreedly m (perennial) flow, skip to Section 1: skip to Section 111.D.4

or non-navigable tributaries of TNWs where the tributaries are "relatively permanent pically flow year-round or have continuous flow at least seasonally (e.g., typically 3 an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round 1. If the aquatic resource is a wetland directly abutting a tributary with perennial flow,

A wetland that is adjacent to hut-EPA regions will include in the r relatively permanent this stary the though a significant nexus finding

not directly abut an RPW requires a significant nexus evaluation. Corps districts and any available information that documents the existence of a significant nexus between a tot perennial (and its adjacent wetlands if any) and a traditional navigable water, even it required as a matter of law.

If the waterbody is not an $\mathbb{C}^2 \times \mathbb{C}$ waterbody has a significant never consider the tributary in small has analytical purposes, the todeutary of the tributary, or its adjacent wether the tributary, Section M.B.2 for a se and offsite. The determination w.

ectland directly abutting an RPW, a JD will require additional data to determine if the a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must with all of its adjacent wetlands. This significant nexus evaluation that combines, for all of its adjacent wetlands is used whether the review area identified in the JD request is or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.I for assite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite has a significant nexus exists is determined in Section III.C below.

Characteristics of non-Tilling flow directly or indirectly into TNW

General And Condition Watershed 141. Drainage are . \$1 Average and A. A. A. Theres Average a.... inches

(ii) Physical Characteristic .

(a)	Relati	1;	3	 1		
	□ mans		,		,	

☐ Tribe and feed as the into TNW.
☐ Tribe and the second in Pick List tributaries before entering TNW.

Project that the life shist river miles from TNW. Project at San Villa List river miles from RPW.

Project d is list aerial (straight) miles from TNW.

Project d is list aerial (straight) miles from RPW.

Project d is aerial (straight) miles from RPW.

e as state boundaries. Explain:

Identify Readers of the William Tributa 1 c. m 3 c nown:

⁴ Note that the Instructional Gale of the Section 19 ditional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by ad the harm archutary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	Tributary	existics (check all that apply tural rifficial (man-made). Explait adjusted (man-altered).	n:	in:	
		Tribut: 'y proper A mare (vi) A mare felor i A mare felor i Av turn inte	feet feet Pick List.	mate):	
		Primary tribut by the Still Still Co. is as a constant of the Still Stil	composition (check all that Sands Gravel Vegetation, Type/%	t app	oly): er:	☐ Concrete ☐ Muck
		Present of run r (1). Tributh: g of letter and	ii:, [e.g., highly eroding, slot of complexes. Explain: k List . Nimate average slope):	ıghii %	ng banks].	Explain: .
	(c)	De rechewie	and flow events in review are	a/ye:	ar: Pick L i	ist
		Other: " " +	tion and volume: .			
		Surface Plc.	it. Characteristics: .			
		Subsurf et Nov. 21.	ist Explain findings: performed:			
		Tribu	⊕ Eapply):			
			ail indicators that apply): a line impressed on the bank be character of soil		destructi	ence of litter and debris on of terrestrial vegetation ence of wrack line
		i dina	to field down, bent, or absent starbed or washed away position ng		sediment scour multiple	
		De dend)HWM. ⁷ Explain:	_		,
		To be a reconstruction of the second of the	OHWM were used to determine andicated by: Ince along shore objects a debris deposits (foreshore) risings/characteristics	Mea	an High W survey to a physical m	at of CWA jurisdiction (check all that apply): Yater Mark indicated by: available datum; harkings; lines/changes in vegetation types.
(iii)	Chai	mical Charter effects racterize Explair tify specific than a	arer color is clear, discolored	, oily	/ film; wat	er quality; general watershed characteristics, etc.)

⁶A natural or man-made discential or man-ma

		Ripartan de riber se Wetland fringe. That Habitat to: Fed rate Uiston : Fist photoatea Other, violen.	ie . Explain findings: .
2.	Charact	eristic walls :	cent to non-TNW that flow directly or indirectly into TNW
		Project vet at 1	eres in .
	(b)	Gene: All Property of the Flow Class Constitution of the Constitut	A^{μ} .
	(c)	Wet ph. N	hydrologic connection. Explain: cetton. Explain: an barrier. Explain:
	(d)	Projes : : : : : : : : : : : : : : : : : : :	k List river miles from TNW. List aerial (straight) miles from TNW. ration of wetland as within the Pick List floodplain.
	Cha	emical Construction of the characteristic contraction of the characteristic control of the chara	e.g., water color is clear, brown, oil film on surface; water quality; general watershed plain. known:
		Vege:	eristics (type, average width):
3.	All	wetland	Ijacent to the tributary (if any) ed in the cumulative analysis: Pick Eist s in total are being considered in the cumulative analysis.

	For each we're	following:		
	<u>Direct</u> ¹ gi	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
	Summ. Property 1	gical, chemical and physic	al functions being performed:	
c.	SIGNIFICANT NEX SOLUTE LA	NATION		
	by any wetlands adjaced. The of a TNW. For each of the office of wetlands, has more than the office of the considerations when ever antique in office of water in the tributary of the consideration. It is not approximately and its adjaced.	tary to determine if they situations, a significant neon insubstantial effect officiant nexus include, but imity to a TNW, and the ermine significant nexus	and functions of the tributary itse significantly affect the chemical, pexus exists if the tributary, in com n the chemical, physical and/or bid are not limited to the volume, dur functions performed by the tributabased solely on any specific thresh the TNW). Similarly, the fact an at nexus.	physical, and biological integrity bination with all of its adjacent ological integrity of a TNW. ration, and frequency of the flow ary and all its adjacent told of distance (e.g. between a
	Draw connections between the test discussed in the Institute: • Does the tribute: TNWs, or to red • Does the tribute:	ook. Factors to consider with its adjacent wetlands pollutants or flood waters with its adjacent wetlands	(if any), have the capacity to carry preaching a TNW? (if any), provide habitat and lifecycle	pollutants or flood waters to
	 other species, successions Does the tributar of support downstreen Does the tributar of support downstreen biological integral 	with its adjacent wetlands	young for species that are present in (if any), have the capacity to transfe (if any), have other relationships to	er nutrients and organic carbon tha
	Note: the above list a means are a below:	is not inclusive and other	r functions observed or known to o	occur should be documented
	I. Significant next. In the second findings of press.		cent wetlands and flows directly or based on the tributary itself, then go t	
	TNWs. Explain. 11	n-RPW and its adjacent accombsence of signification Hi.D:	wetlands, where the non-RPW flow nt nexus below, based on the tributan	ws directly or indirectly into ry in combination with all of its
	3. Significant next of presence or abservation III.D:		W but that do not directly abut th tributary in combination with all of	
D.	DETERMINATION ()	"HONAL FINDINGS. T	HE SUBJECT WATERS/WETLA	NDS ARE (CHECK ALL
	1. TNWs and Adj Version is TNWs: Wetlands adj	Check all that apply and p vidti. it). Or, acres.	rovide size estimates in review area:	
	2. RPWs that flow limet Tributaries contributary is presented.	rectly into TNWs. buttaries typically flow yea	ar-round are jurisdictional. Provide d	ata and rationale indicating that
	☐ Tributaries () \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		ow "seasonally" (e.g., typically three led at Section III.B. Provide rational	

seasonally:

		☐ Tributa ☐ Other n	No te i= let i i	tional waters in the review area (check all that apply); incar feet width (ft). discress.
	3.	☐ Waterbody	1 - 1 - 1 - 1	or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a apporting this conclusion is provided at Section III.C.
		☐ Tributa: ☐ Other i	- 10 - 21 .	i waters within the review area (check all that apply): linear feet width (ft). s: acres. t aters:
	4.	Wetlands d Wetlands indica:	rent, in , di se , ta in	PW that flow directly or indirectly into TNWs. and thus are jurisdictional as adjacent wetlands. and RPW where tributaries typically flow year-round. Provide data and rationale is perennial in Section III.D.2, above. Provide rationale indicating that wetland is
			. ii Sc 1	g an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly
		Provide acreage	' a!	dictional wetlands in the review area: acres.
	5.	Wetlands adjac Wetlands the and with since conclusion	1 "1 1	ectly abutting an RPW that flow directly or indirectly into TNWs. abut in RPW, but when considered in combination with the tributary to which they are adjacent spacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this tier. BLC.
		Provide acreage	·	adject—and wetlands in the review area: acres.
	6.	Wetlands adjact Wetlands adjact with similar conclusion	l ici at - iii	ders, and have when considered in combination with the tributary to which they are adjacent and
		Provide estimate	on are in	d wetlands in the review area: acres.
	7.	As a general rule Demonstrat Demonstrat Demonstrat	and the second	
E.	DE SUC	GRADATION C CH WATERS (C which are or coul from which lish a which are or coul Interstate isolate Other factors.	1. 4728 (1.1) 2. 47. K 27. K	FRA-STATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, ON OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY AT APPLY): 10 state of foreign travelers for recreational or other purposes. Food 12 e taken and sold in interstate or foreign commerce. Strict purposes by industries in interstate commerce.
	Ide	ntify water body	, , -ti	. attorate supporting determination:
9 To	comp	note # 3. olete the analysis for o asserting or decli- nsistent with the p	· .; · V	on HED 6 of the Instructional Guidebook. Sion based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

4.7 4.5	vide estimates for fributary waters. Other non-wetland ldentify type () Wetlands: ac.	v itei		ters in the review area (check all that apply): width (ft). 28.
	If potential weth wetland Delinear Review area include "Migratory Waters do not not not not not not not not not no	ls ve on M ed is in Tor i + R i + i.e.		NOCLUDING WETLANDS (CHECK ALL THAT APPLY): Within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers or appropriate Regional Supplements. ers with no substantial nexus to interstate (or foreign) commerce. Court decision in "SWANCC," the review area would have been regulated based solely on the check. (Nexus) standard, where such a finding is required for jurisdiction. Explain: (Se) in pland cut ditch maintained strictly for the purposes of agriculture, without wetland
fact jud	tors (i.e., presence a gment (check all t Non-wetland was Lakes/ponds: Other non-wetland wetlands:	Trug unp Notes		lictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR apresence of endangered species, use of water for irrigated agriculture), using best professional reams a linear feet width (ft). Letters, I ist type of aquatic resource:
	noting is required: Non-wetland w. a Lakes/ponds: Other non-wetland Wetlands:	juds rsalic aure		lictional waters in the review area that do not meet the "Significant Nexus" standard, where such that apply): Treams: linear feet, width (ft). Letter 1 ist type of aquatic resource:
A. SUP	Maps, plans, ple	Uat ity y	P	of for JD (check all that apply - checked items shall be included in case file and, where checked sources below): d by or on behalf of the applicant/consultant: or on behalf of the applicant/consultant.
	Office cone Office doc Data sheets prep Corps navigable U.S. Geological USGS NH	y a le la ed ly al y - ar ly att		delineation report. ta streets, delineation report. ce Atlas:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
	☐ USGS 8 and 1 U.S. Geological USDA Natural F National wetlar. State/Local wet. FEMA/FIRM may 100-year Flood:	Souther an of the A So		1:24,000; La Paloma. ation Service Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx it it is a content of the content of th
	or E Previous determ Applicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicable/supplicabl	er d al . iti n- tii e t.i		Out on GA US Mexico Imagery 2004; Series #172320, 172345, 172352. Pate: A candidate of response letter:

B. ADDITIONAL COM ... PORT JD: WL43 is a maintained upland cut agricultural ditch adjacent to WL41 and a levee.

1. PEOVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

in the instructions provided in Section IV of the JD Form Instructional Guidebook. This form should be completed by SECTION I: BACKGROUND AND RNATION 1 PR APPROVED JURISDICTIONAL DETERMINATION (JD): A. REPORT COMPLETION B. DISTRICT OFFICE FIELD AS E AND NUMBER: Galveston, SWG-2008-0040, WL42 E. CAGROUND INFORMATION: C. PROJECT LOCATEDNA is a borough: Cameron City: Los Indios State:Texas (); n egree decimal format): Lat. 26 2' 37"° N, Long. 97 42' 30"° W. Center coordinates on the lar rs | Transverse Mercator: Name of nearest wat nod ... Name of nearest Tractional and blowlater (TNW) into which the aquatic resource flows: None Name of watershed of Hymronia in Code (HUC): Lower Rio Grande Texas; 13090002

Check if map/degrand of the watershed of the w Check if other sizes (| g = 11 | e = atigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD for: D. REVIEW PERFOR TELLS T. EVALUATION (CHECK ALL THAT APPLY): Office (Desk) I email to Des Field Determin: On 11 19/07 SECTION II: SUMMA CALOF TEN OF JURISDICTION. A. RHA SECTION 10 1 TER There **Are no** "navigable of the with a Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required] ■ Waters subject: the first the first of the tide. are been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Waters are presactly and Explain: ON OF JURISDICTION. B. CWA SECTION 404 ELECTRICAL There Are no "waters of ... I. Waters of the U a. Indicate presence seat see U.S. in review area (check all that apply): 1 zit ial seas zi l Ws TNW the it Wetla surj Weth sum of two Ms
Relationly to the two directly or indirectly into TNWs
Non-two troubles of two directly or indirectly into TNWs
Weth also directly two directly or indirectly into TNWs Wetlas Is a light of the hot directly abutting RPWs that flow directly or indirectly into TNWs Wetler Is : iii non-RPWs that flow directly or indirectly into TNWs Importance is actional waters Isolata (in ter-The pastate waters, including isolated wetlands b. Identify (estimate to the valers of the U.S. in the review area: Non-wetland it is it is feet: width (ft) and/or acres. Wetlands: c. Limits (bound es ic on based on: Not Applicable, Elevation of escale NE (Cknov n); 2. Non-regulated attended to check if applicable):3 Potentially arises and or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: V. .42 is and or wetlands were assessed within the review area and determined to be not jurisdictional.

Boxes checked below shall a second 20 Pleting the appropriate sections in Section III below.

a tributure that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" ² For purposes of this form (1981) (e.g., typically 3 months).

3 Supporting documentation and a second sec

ci nilli

SECTION III: CWA ANALAS

A. TNWs AND WETLANDS AND TINT TO TNWs

The agencies will assert the effect on over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section 1.1.4.4. mly; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.: other and election III.B below.

TNW

Identify TNW.

Summarize rational land and a determination:

Wetland adjace at the Au-

Summarize rationale states are good enclusion that wetland is "adjacent":

B. CHARACTERISTICS CO. TO ARY ETHAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summa: zeral and he aregarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or no derds for jurisdiction established under Rapanos have been met.

The agencies will a port the proper non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tribut and typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that he are about an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to see an id. D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III....

A wetland that is adjace to the finder not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the conductive conductive any available information that documents the existence of a significant nexus between a relatively permanent tributer at its not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant aexisting it not required as a matter of law.

If the waterbody 4 is z or z z z z z we think directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant low with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributance is a significant next sevaluation flust adjacent wetlands. This significant next sevaluation that combines, for analytical purpose the results adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands is used whether the review area identified in the JD request is the tributary, Section III. B. I for the tributary, Section III. B. I for a significant next sevaluation flust evaluation flust e

1. Characteristics for the state flow directly or indirectly into TNW

General Areas . .: . clist Watershed ı külist Drainage at a: Average and all. inch is Average a la Thomas

(ii) Physical Control : :

(a) Relatives 1. A The distribution of the Relatives of the Relative of the Relatives of the Relative of the Relatives of the Relatives of the Relative of the Relat

Project with a lief List river miles from TNW.

Project with a lief List river miles from RPW.

Project with a lief List aerial (straight) miles from TNW.

Project with a lief List aerial (straight) miles from RPW.

Project with: a cove as state boundaries. Explain:

5 N. W. Identi. :

er fknown: . Tribata x

^{*} Note that the Instructional and decreased and indicated information regarding swales, ditches, washes, and erosional features generally and in the arid

Flow route can be described to the first and the first and which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General 1 Tribut ary	7	rateristics (check all that apply): Vatural Artificial (man-made). Explain: Jampulated (man-altered). Explain:
	Avera Averasy	:1 [*	courth respect to top of bank (estimate): feet feet η st Pick List.
	Primary to 1. Suss E Co 3. E R E Suss E Suss E R E Suss E		Solute composition (check all that apply): Sands Gravel Vegetation. Type/% cover:
	Presence :	::	to dity (core, highly eroding, sloughing banks]. Explain: A post complexes. Explain: Plack List provings a average slope): %
(c)	Desc.		or Pick List 1. 1. 1. 1. 1. 1. We events in review area/year: Pick List 2. 1. 1. 1. 1
	Surface fi	23	. List. Characteristics:
	Subsurfact []	.y.	k dist - plain findings: r est performed:
		The second secon	the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line of matter down, bent, or absent resturbed or washed away cour sturbed and country country about the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
	If factors	,1 :4,	h OHTVIA were used to determine lateral extent of CWA jurisdiction (check all that apply): hinched by: hinched by: hinched by: hinched by: survey to available datum; hichem deposits (foreshore) hisher characteristics physical markings; vegetation lines/changes in vegetation types.
Cha	Explair		contact color is clear, discolored, oily film; water quality; general watershed characteristics, etc.)

(iii)

⁶A natural or man-made discontitute OHWM has been removed by regime (e.g., flow over a ro-k-but flibid.

the 1 MI doe not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the 1 agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow it a culve to the agencies will look for indicators of flow above and below the break.

	(iv)	Riparian c : Wetland for Habitat fo.	, r.	
		☐ 1 edera	41.0	φ vies. Explain findings:
		☐ 1 ish/s	:10	1 plai cindings:
				it ly-sensitive species. Explain findings:
		Vejuat.		li grsup, Explain findings:
2.	Cha	racteristics of v	.d·	$\mathbf{d}_{\mathrm{plecent}} \leftarrow \mathbf{non\text{-}TNW}$ that flow directly or indirectly into TNW
	(i)	Physical Char.	sti	:
		(a) General V	; :	r len les
		Properties		
		Wetla		
		Wetla:.		
				I plain:
		Project we'.	С,	s a serve as state boundaries. Explain:
		(b) General Id	.!	or apply ith Non-INW:
				Main .
		Surface fl	. Pi	1 ist
		Chara	100	
		Sub artac	I.	Kriist i iplain findings:
		7 1)/	11-) t per (med:
		(c) Web and		man atton with Non-TNW:
		Direct		
		□ `so! di	11.1	
			7.1	and Tayon ongic connection. Explain:
				or or tier Explain:
		\square 8.	1	in burrer. Explain:
		(D D)		
		(d) Proximity	,,	P. k List over miles from TNW.
				ick List weight (straight) miles from TNW.
		Flov is fi	ek	is
		Estimate .	1117	and the confined as within the Pick List floodplain.
	(ii)	Chemical Cha	181	Ni control of the con
		Characterize v		and reagant later color is clear, brown, oil film on surface; water quality; general watershed
		character.	ic	Explain:
		Identify specifics	H	S. A known
		NO. 1 1 1 21		West of the Arthropholish of annihila
	(111	Biological Cha	1.18	is. Welland supports (check all that apply): in teristic (type, average width):
				cover Explain:
		Hab at fe	; `	Cover Sprain.
			32	es explain findings:
				prain findings:
		□ + ther	11	is by-set live species. Explain findings:
		quai -	. !!	Learnity - Aplain findings:
3.	Cha			to the tributary (if any)
		All wethind(s)		
		Approximately		are being considered in the cumulative analysis.

For each wetland, seei, the following:

Directly: Y Size (in acres)

		Summari.	- 11	i- gical.	hemical and physical functions being performed:
C.	SIG	NIFICANT NEXUS	. E1	-HSATIC	hoN
		gnificant nexus anals			flow characteristics and functions of the tributary itself and the functions performed
		nny wetlands a ljace TNW. For each of a .			determine if they significantly affect the chemical, physical, and biological integrity ons, a significant nexus exists if the tributary, in combination with all of its adjacent
		lands, has more that	101	a' e or ir	substantial effect on the chemical, physical and/or biological integrity of a TNW.
		siderations when eve			nexus include, but are not limited to the volume, duration, and frequency of the flow
		vater in the tributary a lands. It is not appr			to a TNW, and the functions performed by the tributary and all its adjacent as significant nexus based solely on any specific threshold of distance (e.g. between a
		utary and its . djace			and a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or
		side of a flood plain in .	$_{\rm ol}$, eterni	ative of significant nexus.
	Dra	w connections betw:	Le f	times dos	comented and the effects on the TNW, as identified in the Rapanos Guidance and
	disc	cussed in the instruct			Eactors to consider include, for example:
	•	Does the tributary, i			hs adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to
	•	TNWs, or to reduce Does the tribulary, i	0		acts or flood waters reaching a TNW? Adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
	•	other species such.	11	1. Trig.	wing, or rearing young for species that are present in the TNW?
	•	Does the tribulary	-4.	:1	endjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that
		support downstream.			li and material (form) have other relationships to the physical phomical or
	•	Does the tributary.	: `	::[.	adjacent wetlands (if any), have other relationships to the physical, chemical, or
	Not	e: the above list of c	(4.2)	m is not	carclusive and other functions observed or known to occur should be documented
	belo				
	1.	Significant nexus f	-51	a n-Re	that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain
		findings of presence	CT	** Sign.	ant nexus below, based on the tributary itself, then go to Section III.D:
	2.	Significant nexus f		-1	and its adjacent wetlands, where the non-RPW flows directly or indirectly into
		TNWs. Explanation	:	. 201	
		adjacent weblacks. I	. •	**	•
	3.	Significant nexus f	×1	diand	adjacent to an RPW but that do not directly abut the RPW. Explain findings of
		presence or in cases	1111	1 . 200	dow, based on the tributary in combination with all of its adjacent wetlands, then go to
		Section III.D:			
D.		TERMINATIONS (). AT APPLY):	RI	H THO	1 AL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	111	ATAFFET).			
	1.	TNWs and Adjace		Is. Char	
		☐ TNWs: li: ☐ Wetlands Eace	٠.	VIVI	Or, acres.
		_			
	2.	RPWs that flow dia			to TNWs. A pically flow year-round are jurisdictional. Provide data and rationale indicating that
		Tributance of 1	:	.*	Applicanty flow year-round are jurisdictional. Frovide data and rationale indicating that
		Tributar of i	· '	r ter	have continuous flow "seasonally" (e.g., typically three months each year) are
		jurisdict: mal.	lij	+ 10 ta	behasion is provided at Section III.B. Provide rationale indicating that tributary flows
		seasona.			

Directly abuts? (Y/N)

Size (in acres)

		Provide stimate Tribe ary ve Other non-	In the self-etomai staters in the review area (check all that apply): Intendiction width (ft). Intendiction acres.
		Ider titly ty	eci des
	3.	Non-RPWs ⁸ that flow Waterbo y that TNW is jurisd.	irec v er indirectly into TNWs. It a KV er an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a al. 1 ata supporting this conclusion is provided at Section III.C.
		Provide estimates for Tributary v	adic on a water within the review area (check all that apply): linear sect width (ft).
		Other non-	and host deres.
	4.	Wetlands directly and Wetlands direct Wetlands a instructing directly and	ang a. PW that flow directly or indirectly into TNWs. and the sare jurisdictional as adjacent wetlands, you that and the sare jurisdictional provide data and rationale that are presented in Section III.D.2, above. Provide rationale indicating that wetland is guarded A.
		Web aids scalarful, abutting a	The transmitted where tributaries typically flow "seasonally." Provide data indicating that tributary is a constant onale in Section III.D.2, above. Provide rationale indicating that wetland is directly
		Provide acreane esta	fig. 11 dilection of wetlands in the review area: acres.
	5.	Wetlands adjecent ** Wetland that and with samil conclus (a.s.)	La Corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs. And A corectly Sutting an RPW that flow directly or indirectly into TNWs.
		Provide acreage esti:	s for an adjectional wetlands in the review area: acres.
	6.	Wetlands adjacent Wetlands adjacent with similarly seconclusion is pre-	and Wis that flow directly or indirectly into TNWs. Strong and respect thave when considered in combination with the tributary to which they are adjacent and the strong and school as significant nexus with a TNW are jurisdictional. Data supporting this strong as the
		Provide estinates (acres.
	7.	Impoundments of As a general rode, the Demon rode to Demons rate the Demons rate the	the total of the disdictional tributary remains jurisdictional. 1900 The risk a reated from "waters of the U.S.," or 1901 The risk to one of the categories presented above (1-6), or 1907 The risk to a nexus to commerce (see E below).
E.	DEC SUC 图 图	GRADATION OR I CH WATERS (CHF) which are or could be from which I or so which are or could be Interstate isolated wo. Other factors a xpl.	O. MARCHATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, ISOLATED WETLANDS, ISOLATED W
	Ide	ntify water be year	man Learntio La supporting determination:
⁹ To ¹⁰ Pr	comp	note # 3. blete the analysis refer to asserting or declining insistent with the proces	The second of the Instructional Guidebook. Vis. of the first and solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for the first action of the second of the secon

	vide estimates or jur Tributary wate Other non-wettand we Identify type(s) of Wetlands: acres.	one convers in the review area (check all that apply): available to the control of the control o
€	N-JURISDICTION A If potential wetlands Wetland Delineation, Review area included. Prior to the Jan "Migratery Bind Waters do no meet Other: (explain a film	Research DING WETLANDS (CHECK ALL THAT APPLY): as seed VLD the review area, these areas did not meet the criteria in the 1987 Corps of Engineers and the output printer Regional Supplements. Into variers with no substantial nexus to interstate (or foreign) commerce. I Statement Corp. decision in "SWANCC," the review area would have been regulated based solely on the and the corp. Standard, where such a finding is required for jurisdiction. Explain: and the corp. Standard, where such a finding is required for jurisdiction. Explain:
Profact fact judg	vide acreage estimate ors (i.e., presence of) gment (check all that) Non-wetland waters Lakes/ponds Other non-we land) Wetlands: acre	new adjusters of waters in the review area, where the sole potential basis of jurisdiction is the MBR demonds, presence of endangered species, use of water for irrigated agriculture), using best professional fine a point linear feet width (ft). 1. The solid type of aquatic resource:
a fir	vide acreage e mate- nding is require, for j Non-wetland, enter Lakes/ponds: Other non-weilland v Wetlands: acr.	dreft Ewaters in the review area that do not meet the "Significant Nexus" standard, where such coic an ant apply): In the linear feet, width (ft). St type of aquatic resource:
A. SUP	PORTING DATA SOUT requested, appropriat Maps, plans, thots of Data sheets propared Office contains w Office donnote Data sheets prepared Corps navigable wait U.S. Geologica, Sur	Dev. well or 3D (check all that apply - checked items shall be included in case file and, where checked fier consumer selow): sall or divy on behalf of the applicant/consultant: and of the applicant/consultant. and or different defineation report. and of the applicant/consultant.
	USGS NIID data USGS 8 and 12 and USGS 8 and 12 and USGS 8 and 12 and USDA Natural Resolutional wedges in State/Local medianal FEMA/FIRM auphotographs Taccommunication of the USGS NIID data and USGS NIID	The same of the scalar equal name: 1:24,000; La Paloma. The scala
题 2 4 (2.5)	Previous det sinat Applicable supporta Applicable supporta Other information q	Section 1 to the section of response letter:

A PROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

following the autructions provided in Section IV of the JD Form Instructional Guidebook. This form should be complete. **SECTION I: BACKGROUN** INFO RMATIO A REPORT COMPLETIC DATE FOR ATPROVED JURISDICTIONAL DETERMINATION (JD): B. DISTRICT OFFICE, FIGURE NAMES E, AND NUMBER: Galveston, SWG-2008-0040, WL41 PROJECT LOCATION AND BECKGROUND INFORMATION: State: Texas nty pash borou ht Cameron City: Los Indios Center coordinates of site t long in degree (weimal format): Lat. 26 2' 37"° N, Long. 97 42' 30"° W. Umi isal tran erse Mercator: Name of nearest waterbook Ric Confide Name of nearest Tradition Na i. He Vate ENW) into which the aquatic resource flows: None route in rode all C); Lower Rio Grande Texas; 13090002 Name of watershed or Hy of review a area and on potential jurisdictional areas is/are available upon request. Check if map diagra 1. The same as sites, disposal sites, etc...) are associated with this action and are recorded on a Check if other sites different JD form. D. REVIEW PERFORMED OR THE VARIATION (CHECK ALL THAT APPLY): M Office (Desk) Determination Date **▼** Field Determination ate s = 12 for 0° SECTION II: SUMMARY OF FINE NGS A. RHA SECTION 10 DETECTION OF THE RISDICTION. There Are no "navigab wat Acros Silvano Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required] Waters subject to the of the love of the stade. Lan Live Logi ed in the past, or may be susceptible for use to transport interstate or foreign commerce. Waters are presently Explain: B. CWA SECTION 404 DE LANGE ATTON GOLDURISDICTION. There Are no "waters of the U will Comm Worler Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required] 1. Waters of the U.S. wate of a.S. a review area (check all that apply): 1 a. Indicate presence TNV s. in. incito intervalse... Wet ands real Pours Relatively manage with rs (PWs) that flow directly or indirectly into TNWs Not.-RPW it is the dy adirectly into TNWs if the REC othat flow directly or indirectly into TNWs Wei...nds rest oper of a betty abutting RPWs that flow directly or indirectly into TNWs Wettands. hera then-RP that flow directly or indirectly into TNWs Wetlands and an entire takers Impoundn Isolated (i.e., state in ministant maters, including isolated wetlands b. Identify (estimates tize of vaters of the U.S. in the review area: Non-wetland water the inear feet width (ft) and/or acres. Wetlands: c. Limits (boundaries quris Irtiaa ba a on: Not Applicable. Elevation of a table OTP Martan Non-regulated water | veds as reacch applicable):3 wetlands were assessed within the review area and determined to be not jurisdictional. ■ Potentially juri iona vatri ai. Explain: WL41 the applications the maintained strictly for the purposes of agriculture, without wetland fringe. to 1 supports a appropriate sections in Section III below. ¹ Boxes checked below shalf be sudefine the first set that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" ² For purposes of this form an RI: (e.g., typically 3 months)

Supporting documentation is pre-

dia herit

SECTION III: CWA ANAL 15

A. TNWs AND WETLAND ADJ ENTITE TNWs

The agencies will assert Section III.A.1 and Section III.D.1.; oth Section III.D.1.; oth

1. TNW

Identify TNW

Summarize rationals opert determs ation: .

2. Wetland adjacent to

Summarize rationale opertous conclusion that wetland is "adjacent":

B. CHARACTERISTICS CORPUSED TARY CHART IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarize for in on regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or notice storage storage for fairly distributed under Rapanos have been met.

The agencies will assert it is a mover a sensyigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. trib a rules at typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that could be this and typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that could be this and typically flow year-round (perennial) flow, skip to section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section 11 in the aquatic resource is a wetland directly abutting a tributary with perennial flow.

A wetland that is edjace of the solution of th

If the waterbody is not with a significant next sevaluation must consider the tributary is a significant next sevaluation must consider the tributary is a significant next sevaluation must consider the tributary is a significant next sevaluation must consider the tributary is a significant next sevaluation must consider the tributary is a significant next sevaluation that combines, for analytical purposes, the tributary, or its adjacent wetlands is used whether the review area identified in the JD request is the tributary, Section II. 2 and its adjacent wetlands is used whether the review area identified in the JD request is fall the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section II. 2 and its adjacent wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determine into wetlands is determined in Section III.C below.

1. Characteristics of a 13.4 at that flow directly or indirectly into TNW

(i)	General Area	Jiac :	
	Watersheli size	$P1 \propto List$	
	Drainage area	F k List	
	Average annua	i i n	
	Average annua		. ` `

(ii) Physical Char. Law o

,				
(a)	Relations:	;	4	
	🔲 . ribut	1.1	te tay ii	W.
	ribu	()	. Sec. 1. 12	List tr

ibutaries before entering TNW.

Projective as lekilist smiles from TNW.

Projective are tak list similes from RPW.

Projective as lakilist distraight) miles fr

Project with the list of (straight) miles from TNW. Project with the list of (straight) miles from RPW.

Projectivity of the first of the straighty fines from RF w.

Identify to the second W. Tributary is not with the second to the second

⁴ Note that the Instructional Guide in South the information regarding swales, ditches, washes, and erosional features generally and in the arid West

Flow route can be described by it is to a great pure of which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General I: Tr ibutary	Tariji i imbelem [] Marur [] Art fi	(check all that apply):	
]] Art ti] Manig .	cman-made). Explain: ned (man-altered). Expl	in: .
	Tributary Aver: Aver: Aver:			s):
	Primary tr.	2.	Sands Siravel Vogetation. Type/% cov	☐ Concrete ☐ Muck
	Presence of Tributary	ton dila ton di la ton di la ton di la probleo di la condica di la condi	•	ng banks]. Explain: .
(c)	Desci		events in review area/ye	ar: Pick List
	Surface fly	, 24 - L. a. C.	eteristics:	
	Substitue.	e Politika a a seripe	cain f indings: . an.ed: .	
		consider Plan organization to the contactor of the contactor o	entors that apply): pressed on the bank	destruction of terrestrial vegetation the presence of wrack line
		End Time inde Time in Time :	Me Me Me makiore objects .cposits (foreshore)	ateral extent of CWA jurisdiction (check all that apply): an High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
Cha	Exp	en a en ater	er is clear, discolored, oil	y film; water quality; general watershed characteristics, etc.

(iii)

⁶A natural or man-made do control.

the OHWM has been removed by regime (e.g., flow over a rock out.)

This, against the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock out.)

This, against the OHWM that is unrelated to the waterbody's flow agencies will look for indicators of flow above and below the break.

	(iv)		Riparian co. Wetland fi Habitat for	ti *	- ar reterist ir reteristic.	supports (check all that apply): (type, average width): plain findings:
			□ Ush .;□ Other · .	ate en n	s. I plain f rea y-sens	
2.	Cha	ract	eristics of v	is	a ja cent to	on-TNW that flow directly or indirectly into TNW
	(i)		sical Charac			
		(a)	General We Properties Westark			
			Weda .		31 3 31 3	
			Weita.	1	ru. lq	state boundaries. Explain:
		(b)	Ger e <u>ral</u> . Flo : is: Fi			` <u>,or-TNW</u> :
			Surface III			
						lain findings:
		(c)	Direct:	٠.		on with Non-TNW:
			Not di Di ::		thing budge	gie connection. Explain: . xplain: . r. Lxplain:
		(d)				or miles from TNW.
			Project water Flow Is from		rad List ko 1998	: (Straight) miles from TNW.
			Estimate ap	11+	o eller i	wetland as within the Pick List floodplain.
	(ii)	Cha	emical chari- racterize a - character:		:: 0.1.1	er color is clear, brown, oil film on surface; water quality; general watershed
			ntify peci-			
	(iii)	Bio	Richian : Vegetatis		1000000	supports (check all that apply): Type, average width): splain:
		Ш	Habitat fo cederate Fish spa		. ie l	chun findings:
			ather en	cila	1 1 X - 6 1	e species. Explain findings:
3.	Cha					the tributary (if any)
			wetland(s) proximately			cumulative analysis: Pick List care being considered in the cumulative analysis.

For each wetland to the following:

Directly: Section (in acres)

Summarize the Cological temical and physical functions being performed:

Directly abuts? (Y/N)

Size (in acres)

C. SIGNIFICANT NEXUS 1 TELETINATIO A significant nexus analy will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjace it to but any to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the Arman graitment as, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than the first or in abstantial effect on the chemical, physical and/or biological integrity of a TNW. and significant levus include, but are not limited to the volume, duration, and frequency of the flow Considerations when ever of water in the adjustance of the proximate of a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not approached the ermin significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjaces and or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is of date and live of significant nexus. Draw connections between the torques local nented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instruction in Conceded to the consider include, for example: Does the tributary, in the first of with adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to o pearly it or flood waters reaching a TNW? TNWs, or to reduce if Does the tributary, and the control of the control cating the manage or rearing young for species that are present in the TNW? other species, such 2. Dr. W. F. Friedlich wetlands (if any), have the capacity to transfer nutrients and organic carbon that Does the tribiting. support down that a Does the tell and is a long with a different wetlands (if any), have other relationships to the physical, chemical, or biological integrals of Note: the above list of considerations is not scalarsic and other functions observed or known to occur should be documented below: 1. Significant nexus fine 1984 and non-RP that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or the control signal and nexus below, based on the tributary itself, then go to Section III.D: ach- 32° and its adjacent wetlands, where the non-RPW flows directly or indirectly into 2. Significant nexus fin TNWs. Explain fire a sense of significant nexus below, based on the tributary in combination with all of its adjacent wetlands. chor. Fil 3. Significant and the with a long discount of an RPW but that do not directly abut the RPW. Explain findings of and no seems, based on the tributary in combination with all of its adjacent wetlands, then go to presence o. Section [][.]: D. DETERMINATIONS OF A RESERVE FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): TNWs and Adjacent s. Clother, that apply and provide size estimates in review area: TNWs. I... Ai tr. acres. ■ Wetlands adjace : 2. RPWs that flow discount is followed by the TNWs. to be seen a pecally flow year-round are jurisdictional. Provide data and rationale indicating that Tributari i. tribut. get no erioutes a sac continuous flow "seasonally" (e.g., typically three months each year) are Tributances of 15. jurisdictional 1) at this that tributary flows seasona"v:

		Provide estimate ☐ Trib stary: ☐ Other non ☐ the lify type	incert:	eres in the review area (check all that apply): width (ft). cres.
	3.		. а. 10-И.11 в.	tiy into TNWs. *W. but flows directly or indirectly into a TNW, and it has a significant nexus with a this conclusion is provided at Section III.C.
			From two six lines six and mension water	width (ft). Tes.
	4.	Wetlands directly air. Wetlands directly air. Wetlands directly with indicating indicating indicating air.	So that L is L and L is L and L and L is L and	flow directly or indirectly into TNWs. are jurisdictional as adjacent wetlands. Where tributaries typically flow year-round. Provide data and rationale in Section III.D.2, above. Provide rationale indicating that wetland is
		seasonal ar	La ting to R o. Lar	A where tributaries typically flow "seasonally." Provide data indicating that tributary is under in Section III.D.2, above. Provide rationale indicating that wetland is directly
		Provide acreage estat.	· ri di. ›	actlands in the review area: acres.
	5.	Wetlands ad accus: Wetland dinatand with dinatand with dinatal processors and processors are processors.	. ly ab ? acjac s	erting an RPW that flow directly or indirectly into TNWs. FPW, but when considered in combination with the tributary to which they are adjacent thands, have a significant nexus with a TNW are jurisidictional. Data supporting this
		Provide acreage estin	, for early district	wetlands in the review area: acres.
	6.	Wetlands adjacent to Wetlands adjacen with similarly conclusion is po	e-l Ws the water a accept section of	w directly or indirectly into TNWs. at e when considered in combination with the tributary to which they are adjacent and have a significant nexus with a TNW are jurisdictional. Data supporting this
		Provide estimate at	o nacy	i. In the review area: acres.
	7.	As a general rate, the Demonstrate that Demonstrate that	and retaithese	andictional tributary remains jurisdictional. cated from "waters of the U.S.," or the for one of the categories presented above (1-6), or a nexus to commerce (see E below).
E.	DE SUC	GRADATION OR LA CH WATERS (CHF) which are or could be from which from which are or child be Interstate in the design of the county of the coun) NTRA (TON) . (HAT) (terstal) (r could adust) (in)	ATE WATERS, INCLUDING ISOLATED WETLANDS, THE USE, ATICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY LY): 10 teign travelers for recreational or other purposes. Taken and sold in interstate or foreign commerce. The case by industries in interstate commerce.
	Ide	ntify water body and	a: ze rati :	supporting determination:
⁹ To	comp	note # 3. blete the analysis	eer on . fiction : m in the	1 he Instructional Guidebook. Essacty on this category, Corps Districts will elevate the action to Corps and EPA HQ for CPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

*	Tributary waters:	on waters in the same seet of sections.	review area (check all that apply): th (ft).
Section 1	Prior to the far ? "Migratory Buid"	SRS, INCosed with a mid-or approvaters to the control of the contr	
fringe (Waters do no, m. c. tl. Other: (explain, if not 5.65 acres).	above)	-thandard, where such a finding is required for jurisdiction. Explain: and cut ditch maintained strictly for the purposes of agriculture, without wetland
fac jud	ovide acreage estimate tors (i.e., presence of magnetic (check all that approximate to the check all that approximate the check all the check all that approximate the check all th	a risdiet. : ar birds, pr s. stream a acre ii	waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR to of endangered species, use of water for irrigated agriculture), using best professional linear feet width (ft). Type of aquatic resource:
a fi	nding is required to gue Non-wetland waters (Lakes/pondst ac Other non-wetland w Wetlands: :	e aris lieu e ca (check ac ca es, stream acres	waters in the review area that do not meet the "Significant Nexus" standard, where such adappty): linear feet, width (ft). staype of aquatic resource:
SECTIO	ON IV: DATA SOUR		
	PPORTING DATA. OF requested, appropriates Maps, plan and section Data sheets and profice concerns are concerns as a concern Data sheets prepared for Corps navigable as a concerns.	wed for a cersoury of titled by by or cet ideal and a cersoury of the cersoury	(check all that apply - checked items shall be included in case file and, where checked show): (i) the half of the applicant/consultant: (ii) direction report. (ii) the applicant/consultant. (iii) the applicant/consultant. (iii) the applicant/consultant.
	U.S. Geological and USGS NHD latt. USGS 8 and 42 - U.S. Geological 8t. USDA Natural Reson National wet and in State/Local with latter.	maps. i Cites servation ip(s). map(s)	w quad name: 1:24,000; La Paloma. vice Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.
		& Dat	Social Geodectic Vertical Datum of 1929) A US Mexico Imagery 2004; Series #172320, 172345, 172352.
(A) (A) (A) (A)	Applicable supporting Applicable supporting Other information of	cosy: : Sclitera s	

B. ADDITIONAL COMM: SUPPORT AS: WL41 is a maintained upland cut agricultural ditch adjacent to a levee.

PROVED A RISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This for	rm should be complete.		sing tha	actions provided in Section IV of the JD Form Instructional Guidebook.
	ON I: BACKGROUN. EPORT COMPLETIO		RMATIO FOR	ROVED JURISDICTIONAL DETERMINATION (JD):
B. DI	ISTRICT OFFICE. FII	\	E, ANE	MBER: Galveston, SWG-2008-0040, WL40
St	ROJECT LOCATION : ate:Texas Content coordinates of site a	÷ . ·	CKGR - crish bore : in degree crisa. Tru	D INFORMATION: Cameron City: Los Indios imal format): Lat. 26 2'49.119"° N, Long. 97 44' 41.732"° ₩. rse Mercator:
Na Na ⊠	ame of nearest waterbody ame of nearest Tradition, ame of watershed or Hy Check if may diagram Check if oth itsites (a different JD form.		ande able Water Init Co w area e mitig -	NW) into which the aquatic resource flows: Rio Grande C): Lower Rio Grande Texas; 13090001 a potential jurisdictional areas is/are available upon request. Sites, disposal sites, etc) are associated with this action and are recorded on a
D. R	EVIEW PERFORMED Office (Desk) Detern.	.1 -0 -4	TE EV 3. Date: 129-(ATION (CHECK ALL THAT APPLY):
	ION II: SUMMARY O IA SECTION 10 DETE	<u>.</u>	. <u>NGS</u> TION (RISDICTION.
	Are no "navigoba area. [Require.]		S ' w	layers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the
10			low of a uve be	in the past, or may be susceptible for use to transport interstate or foreign commerce.
B. CW	VA SECTION 404 DET		401Tz	AURISDICTION.
There A	Are no "waters of to the		. Clem	at Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required
1.	Waters of the U a. Indicate presence TNWs, inci- Weighton is	in .	of U ritorial	review area (check all that apply): 1
	Relatively ; Non-RPW: We lands d We lands a		t water - direct.	(Vs) that flow directly or indirectly into TNWs streetly into TNWs
	We lands d Wetlands ac We funds ac Impoundment		but not a non-RI isduction intrast	that flow directly or indirectly into TNWs thy abutting RPWs that flow directly or indirectly into TNWs
	b. Identify testimates. Non-wetland and a Wetlands		vaters inc. r f	U.S. in the review area: width (ft) and/or acres.
	c. Limits (boundarie) Elevation of estate as		iction	an 1987 Delineation Manual
2.	Non-regulated water Potentially jurisk Explaid WL40 above the 100-y		ds (che), vaters urd of v plain:	upplicable): ³ verlands were assessed within the review area and determined to be not jurisdictional. of the US (Rio Grande) beyond 2 man-made barriers (2 levees), both of which are there have pipes or culverts linking WL40 to the nearest waterbody (Rio Grande).
² For pu (e.g., ty	s checked below \$1.41 \tau sup- urposes of this fo 10.42 \text{PIW} vpically 3 months orting documentation 10.42 \text{PIW}		concole. Las i to retica II.	appropriate sections in Section III below. that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally"

WL40 does not; any interpretable of the any interpretable of the Rio Grande survey were observed by the Rio Grande survey were observed

SECTION III: CWA ANAL)

A. TNWs AND WETLAND . . . CENT **NWs**

As and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete The agencies will assert just all on over 1 Section III.A.1 and Section (I.: 1, only; if e aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.: othe see section 1.B below.

TNW

Identify TNW:

Summarize rationale serving determination:

Wetland adjacent to ...

Summarize rationale and agreench that wetland is "adjacent":

B. CHARACTERISTICS O ... UTART AT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

characteristics of the tributary and its adjacent wetlands, if any, and it helps This section summarizes it to an ion requi rrisdiction established under Rapanos have been met. determine whether are not a lest, adards for

The agencies will assert i liction over waters" (RPWs), i.e. trib- hat typin months). A wetland that ... abuts ac (perennial) flow, skip to 😘 [1.D.2.] skip to Section 11..D.4.

mavigable tributaries of TNWs where the tributaries are "relatively permanent flow year-round or have continuous flow at least seasonally (e.g., typically 3 is also jurisdictional. If the aquatic resource is not a TNW, but has year-round aquatic resource is a wetland directly abutting a tributary with perennial flow,

A wetland that is adjacer that do -EPA regions will include cord as relatively permanent trilat is no though a significant nexu-...d ≥ is not :-

e directly abut an RPW requires a significant nexus evaluation. Corps districts and adiable information that documents the existence of a significant nexus between a canial (and its adjacent wetlands if any) and a traditional navigable water, even ared as a matter of law.

If the waterbody is not aswaterbody has a significaevas with a T consider the tributary in 11 .tion with .i.,. and al. analytical purposes, the to the tributary, or its adjacands, o. the tributary, Section III. anv ons: and offsite. The determina and paether and

Physical wething a directly abutting an RPW, a JD will require additional data to determine if the 11. If the tributary has adjacent wetlands, the significant nexus evaluation must of its adjacent wetlands. This significant nexus evaluation that combines, for suffacent wetlands is used whether the review area identified in the JD request is a. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for eflands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite ificant nexus exists is determined in Section III.C below.

Characteristics of no s that !! areetly or indirectly into TNW

General Area C Water hed size :k List . .:k List Drainage area: Average a initial color and also Averageaa. i: . . .

(ii) Physical Chara-

P. Jeer water

(a) Rejutionship 14. in Ca lirectly in

Triotan List tributaries before entering TNW. aroagh a

ick Lis: a les from TNW. P. geet wat . ick List randes from RPW. Project wat

Profession. ick List al (traight) miles from TNW. as (straight) miles from RPW. Project and , ick Lis:

Laca Ho WZ1 ϵ :

Tributary & er, if kno

in internet

ite boundaries. Explain:

⁴ Note that the Instructional Graden the mation regarding swales, ditches, washes, and erosional features generally and in the arid ins addit: West

weach flows through the review area, to flow into tributary b, which then flows into TNW. ⁵ Flow route can be described by ide.g., tribe

(b)	<u>General</u> In Tri bu tary .	□ Natu	(man-made). Explain:	
	Averas	with re to de- epsh te compose Pict	to top of bank (estimate):	
	Primary tril Sib Co B Co		stition (check all that apply): Stads	
	Presence of a Tributary p	ail - tability 2 Pick Lis approxim		
(c)	Description. Other infor. Surfact the. Substitute:	or: Pick I :	au findings:	
	Tributary :: 3e	all tau. alks all oneckana autralian authors authors	the presence of litter and debris cosed on the bank for of soil the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community	
	If factors of	de Line bur 155 um libert 250 Hordde	Mean High Water Mark indicated by: store objects survey to available datum; posits (foreshore) physical markings; releteristics vegetation lines/changes in vegetation types.	
Cha	mical Chai racteri, trii Expla tily , tic	valer valer serikto	elear, discolored, oily film; water quality; general watershed characteristics, etc.	c .)

(iii)

⁶A natural or man-made discontriction of the OHWM has been removed by a contribution of the OHWM has been removed by a contribution of the original regime (e.g., flow over a rock outer of the original regime). This is the original regime of the origi

	(iv)	Ripar. n	r corre e : Chara Ltříže – Charact	cterist - (t) pe, ave	check all that apply): rage width):		
		☐ Habita: 1 ☐ Fede ☐ Fish ☐ Othe ☐ Aqua	nall of spec products IX	ies dai i finding blair tings: y-se dispecies. y-sty d in findi	gs: Explain findings: ngs:		
2.	Cha	racteristics o	f weartes: djac	rent ic = 1a-T NW t	hat flow directly or ind	irectly into TNW	
			ara telisae : <u>W</u> e alt T <u>u</u> ne	ter <u>i</u> st c			
		W	land Lapla	eres miPl (185) Main			
				service boun	daries. Explain: .		
			Product Expl.	φ w η:- <u>ΓΝΨ</u> : (in)			
			ilov – Liek Lis raeta i – Za				
				ist des confinding Openio dece			
		(c) Wet a .	. <u>J </u>	r <u>mir</u> y i <u>th Nor</u>	n-TNW:		
			can a outling On the ethical Experiments Solution Experiments Solution Experiments	hyd: c connect ctio: p tin: at bu = 1 xplain:	ion. Explain: .		
		Project s Project s		ing: (Lis railes fr List d(traight)			
				ation — ciland as	within the Pick List floo	odplain.	
	(ii)	Characte characte	taril (ics) we a ystem- vist s (ii) I'r. fic c ants, i	plait.	clear, brown, oil film on	surface; water quality; general w	vatershed
	(iii)	🔲 Ripariar	n sties. The Charact	erist 1940. avera	(check all that apply): ge width):		
		Habitat [] he te	for	ie a findin			
		[] Oi:	er e i vici aental atic e le live	y-sens pecies.	Explain findings: ngs:		
3.	Cha	racteristics All wethinks Approximate	ol n ansider	ed not the nulativ	itary (if any) e analysis: Pick List considered in the cumula	tive analysis.	

Directly above (a, N) So with acres)

C.

D.

Directly abuts? (Y/N)

Size (in acres)

	Summarize over Thiological	mical and physical functions being performed: .
SIG	NIFICANT NENUS DE L. REHNATIO	
by a of a wet Cont of wet trib	ny wetland sagaceness e e tributary to	Characteristics and functions of the tributary itself and the functions performed termine if they significantly affect the chemical, physical, and biological integrity is a significant nexus exists if the tributary, in combination with all of its adjacent astintial effect on the chemical, physical and/or biological integrity of a TNW. as include, but are not limited to the volume, duration, and frequency of the flow a TNW, and the functions performed by the tributary and all its adjacent matributary and the TNW). Similarly, the fact an adjacent wetland lies within or we of significant nexus.
	w connections between the features do	ter ted and the effects on the TNW, as identified in the Rapanos Guidance and
•	ussed in the Fast (with a contribute). Does the tributa (in volume ion with a	to consider include, for example: ii cent wetlands (if any), have the capacity to carry pollutants or flood waters to
•	TNWs, or a reduce to a sum to figorificate Does the to make a result of a nation with its	endood waters reaching a TNW?
•	other species, sales are significant.	mag, or rearing young for species that are present in the TNW?
•	Does the transactory, mation with .	d) cent wetlands (if any), have the capacity to transfer nutrients and organic carbon that
•	support downstream sebs? Does the trii may, in a ination with a biological integrity of the NV?	jucent wetlands (if any), have other relationships to the physical, chemical, or
Not belo	e: the above list of co. (i locations is not own:	survive and other functions observed or known to occur should be documented
1.	Significant nexts finally in formon-REV findings of presence of a conditional signal:	has no adjacent wetlands and flows directly or indirectly into TNWs. Explain has below, based on the tributary itself, then go to Section III.D:
2.	Significan, iii iii for non-RPV TNWs. I sq presence o adjacent we'ds	at its adjacent wetlands, where the non-RPW flows directly or indirectly into a possignificant nexus below, based on the tributary in combination with all of its
3.	Significant revas fi greenee e rece to the unit nexus. Section III D:	event to an RPW but that do not directly abut the RPW. Explain findings of based on the tributary in combination with all of its adjacent wetlands, then go to
	TERMINATIONS OF SELECTIONS AT APPLY):	HANDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
1.	TNWs and Adj. ent West ands. Chec. TNWs verifies. Wetlan	electrophy and provide size estimates in review area: acres.
2.	RPWs that now directly in a continuous fribution of the contribution of the contributi	
	Tribumles of TN - very tributarie jurisdictional T - epporting this seasonally:	c continuous flow "seasonally" (e.g., typically three months each year) are is sion is provided at Section III.B. Provide rationale indicating that tributary flows

	Provide a tinal e i a misdictiono Influttry a c	: in the review area (check all that apply): width (ft).
3.	Non-RPWs ⁸ that flow in cetty or indicate Waterbody that the distribution of TNW is jurisdict with Data support	thato TNWs. Into TNWs. Into the flows directly or indirectly into a TNW, and it has a significant nexus with a this conclusion is provided at Section III.C. Sitten the review area (check all that apply):
	☐ Tr.l . water m.ear ·	width (ft).
4.	Wetlands directly as a transpart RPW this. ■ Wetlands direct on RPW and the ■ Wetlands directly abutting an Re- indicating to a turbut my is pere directly abuting in RPW	low directly or indirectly into TNWs. re jurisdictional as adjacent wetlands. where tributaries typically flow year-round. Provide data and rationale in Section III.D.2, above. Provide rationale indicating that wetland is
		where tributaries typically flow "seasonally." Provide data indicating that tributary is the in Section III.D.2, above. Provide rationale indicating that wetland is directly
	Provide acre (1.2 m.d. or arischen 1.2	vetlands in the review area: acres.
5.	Wetlands to account to the directly a wetlands to account to the displacent and with similar to the laddacent conclusion is presented.	at ag an RPW that flow directly or indirectly into TNWs. but when considered in combination with the tributary to which they are adjacent hads, have a significant nexus with a TNW are jurisidictional. Data supporting this
	Provide acreage esting this or unisolection.	tiands in the review area: acres.
6.		A cirectly or indirectly into TNWs. Share when considered in combination with the tributary to which they are adjacent and its. have a significant nexus with a TNW are jurisdictional. Data supporting this
	Provide & Louis and the control were	the review area: acres.
7.	Impoundcuts of ja	cas Lonal tributary remains jurisdictional. The form "waters of the U.S.," or The formone of the categories presented above (1-6), or The London Commerce (see E below).
DE	DLATED JIN' LATER ANTRAS GRADATIO DE ASSECTIONO CH WATER (CLASSE) A THAVA	WATERS, INCLUDING ISOLATED WETLANDS, THE USE, HICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY Δ):
を	which are or could be a vinterstate of from which are or out dibe. It is noticed that the other factors. Explin	re an travelers for recreational or other purposes. domaind sold in interstate or foreign commerce. This by industries in interstate commerce.
Ide	ntify water hody and same ar ze rations.	emporting determination:
Foot	note # 3.	

E.

^{*}See Footnote # 3.

** To complete the analys:

** To comp

			eacurateet v acres	encewarea (check all that apply): thankt).
F.		If potential a ctlands at Wetland Democation at Review area include. Prior to the Jan a Migratory Bird Waters do not meet a landward of waters at floodplain a landward of all four since a set a landward of all four since a set a landward of waters at landward of waters at landward of waters at landward of a landward of a landward of waters at landward of wate	ssessed with- any il and or appropriated waters with the preme Cour- e (MBR) to a dental New the Uniform ex- isting properties or ex- isting properties or ex- tension oximately. It is the Pilo Grand to america func-	stante Regional Supplements. Substantial nexus to interstate (or foreign) commerce. Tendard, where such a finding is required for jurisdiction. Explain:WL40 is Subsequent 2 man-made barriers (2 levees), both of which are above the 100-year stallinking WL40 to the nearest waterbody (Rio Grande). WL40 has crop land on 30' from the first levee (to the southwest), 3,500' form the second levee (to the River, and 1,400' northeast of an agricultural ditch (WL34). WL40 does not
	factor judg	vide acreage estimates of ors (i.e., presence of a gment (cheek ali that a lease Non-wetland waters are Lakes, pond a lease of the non-wetland waters wetlands:	atory birds, president in the president of the stream of t	the review area, where the sole potential basis of jurisdiction is the MBR of fendangered species, use of water for irrigated agriculture), using best professional linear feet width (ft).
	a fir	vide amenge conding is required to the Non-wether condition of the Cakes point of the Cak	a de la laterata Caraba de la mini-	
SEC	CTIC	DN IV: DATA SOUR .	, <u>S</u> .	
Α.	and	requested, approximate Maps, plans, to a Data heet of the Office of the Data with heep of the Corps may, this work	of reace sources i. bridged by o i. to thy con i. seeds ellin ii. ii. dat she ii. or s ly	: shalf of the applicant/consultant: : of the applicant/consultant. : our report. : definention report.
		USGS N. D. data	H. C.mans	websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. di quad name: 1:24,000; La Paloma. di fee Soil Survey. Citation:http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx n di Geodectic Vertical Datum of 1929) di S Mexico Imagery 2004; Series #172320, 172345, 172352.
		Photograph Previous contact Application up on the Other information of the other information o	the decrease and the de	ne of response letter: .

B. ADDITIONAL CO SUPPORT JD: WL40 is a PSS/PEM is dominanted by cattail, black willow, and Jerusalem thorn separated from TNW Session 10 does not perform any interstate commerce function.

APPROVED JURISDICTIONAL DETERMINATION FORM **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 Dec 2007
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1911
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: 634 Copano Cove Road State:Texas County/parish/borough: Aransas City: Rockport Center coordinates of site (lat/long in degree decimal format): Lat. 28.068° N, Long. 97.112° W. Universal Transverse Mercator: NAD83 Zone 14: 685,521E; 3,106,208N Name of nearest waterbody: Copano Bay Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Copano Bay Name of watershed or Hydrologic Unit Code (HUC): 12100405, Aransas Bay Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: 20 Dec 2007 ☐ Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
area	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain: CWA SECTION 404 DETERMINATION OF HIRISDICTION
	CWA SECTION 404 DETERMINATION OF JURISDICTION. re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.1 acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW

Identify TNW: Copano Bay.

Summarize rationale supporting determination:

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 0.1 acres. ☐ Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SE	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24000, ROCKPORT, Texas . USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: .
	State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): GLO, 2002. or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 December 2007
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1899
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: 3 miles south of Runge, 100 ft downstream of SH72 Bridge State: Texas County/parish/borough: Karnes City: Runge Center coordinates of site (lat/long in degree decimal format): Lat. 28.848° N, Long. 97.737° W. Universal Transverse Mercator: NAD83 Zone 14: 623,212E; 3,191,852N Name of nearest waterbody: San Antonio River Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: San Antonio River Name of watershed or Hydrologic Unit Code (HUC): Lower San Antonio 12100303 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: 20 Dec 2007 ☐ Field Determination. Date(s):
SEC	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
area	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain: San Antonio River is listed as a traditionally navigable water body CWA SECTION 404 DETERMINATION OF JURISDICTION.
	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: 50 width (ft) and/or acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW

Identify TNW: San Antonio River.

Summarize rationale supporting determination:

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:					
2.	2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW							
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:					
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:					
			Surface flow is: Pick List Characteristics:					
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:					
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:					
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.					
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants, if known:					
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:					
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.					

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet 50 width (ft), Or, acres. ☐ Wetlands adjacent to TNWs: acres.					
 RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating t tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: 						

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.									
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):									
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.									
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.									
SEC	CTION IV: DATA SOURCES.									
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: Galveston District Navigable Waters Study. U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24000; CHOATE, Texas. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: .									
	National wetlands inventory map(s). Cite name: . State/Local wetland inventory map(s): FEMA/FIRM maps: . 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): NAIP, 2004. or Other (Name & Date): . Previous determination(s). File no. and date of response letter: . Applicable/supporting case law: . Applicable/supporting scientific literature: . Other information (please specify): .									

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 18 Dec 2007 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1665 C. PROJECT LOCATION AND BACKGROUND INFORMATION: State:Texas County/parish/borough: Cameron City: Arroyo City Center coordinates of site (lat/long in degree decimal format): Lat. 26.336° N, Long. 97.486° W. Universal Transverse Mercator: NAD83 Zone 14: 651,088E; 2,913,851N Name of nearest waterbody: Arroyo Colorado Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Arroyo Colorado Name of watershed or Hydrologic Unit Code (HUC): South Laguna Madre, 12100208 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form. D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 18 Dec 2007 Field Determination. Date(s): SECTION II: SUMMARY OF FINDINGS A. RHA SECTION 10 DETERMINATION OF JURISDICTION. There Pick List "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. B. CWA SECTION 404 DETERMINATION OF JURISDICTION. There Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required] 1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): 1 TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.01 acres. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known): Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW

Identify TNW: Arroyo Colorado.

Summarize rationale supporting determination:

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 0.01 acres. ☐ Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24000; LA LEONA, Texas . USDA Natural Resources Conservation Service Soil Survey. Citation:
	National wetlands inventory map(s). Cite name: . State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): GLO, 2002. or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEC A.	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 13 Dec 2007
В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1493
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: 808 Beach Blvd. State: Texas County/parish/borough: Cameron City: Laguna Vista Center coordinates of site (lat/long in degree decimal format): Lat. 28.064° N, Long. 97.110° W. Universal Transverse Mercator: NAD83 Zone 14; 670,928E; 2,888,378N Name of nearest waterbody: Laguna Madre Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Laguna Madre Name of watershed or Hydrologic Unit Code (HUC): South Laguna Madre, 12110208 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 13 Dec 2007 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.1 acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW

Identify TNW: Laguna Madre.

Summarize rationale supporting determination:

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 0.1 acres. ☐ Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SE	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24000, LAGUNA VISTA, Texas. USDA Natural Resources Conservation Service Soil Survey. Citation:
	State/Local wetland inventory map(s). Cite name: LAGUNA VISTA, Texas. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): GLO, 2002. or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 18 Dec 07 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1244 C. PROJECT LOCATION AND BACKGROUND INFORMATION: Rockport Marina State: Texas County/parish/borough: Aransas City: Rockport Center coordinates of site (lat/long in degree decimal format): Lat. 28.025° N, Long. 97.048° W. Universal Transverse Mercator: NAD83 Zone 14: 691,872E; 3,101,583N Name of nearest waterbody: Aransas Bay Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Aransas Bay Name of watershed or Hydrologic Unit Code (HUC): Aransas Bay, 12100405 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form. D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 18 Dec 2007 Field Determination. Date(s): SECTION II: SUMMARY OF FINDINGS A. RHA SECTION 10 DETERMINATION OF JURISDICTION. There Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. B. CWA SECTION 404 DETERMINATION OF JURISDICTION. There Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required] 1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): 1 TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.1 acres. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known): Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW

Identify TNW: Aransas Bay.

Summarize rationale supporting determination: The HArbor empties into Aransas Bay.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNV

☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 0.1 acres. ☐ Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24000, ROCKPORT, Texas. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
	Photographs: Aerial (Name & Date): NAIP, 2004. or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):
	Sales information (pieuse speen y).

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 21 Dec 2007 DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1218 C. PROJECT LOCATION AND BACKGROUND INFORMATION: 4 miles east of US 77 on FM106. State:Texas County/parish/borough: Cameron City: Harlingen Center coordinates of site (lat/long in degree decimal format): Lat. 26.116° N, Long. 97.596° W. Universal Transverse Mercator: NAD83, Zone 14; 640,348E; 2889,365N Name of nearest waterbody: Arroyo Colorado Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Arroyo Colorado Name of watershed or Hydrologic Unit Code (HUC): South Laguna Madre, 12110208 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form. D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 12 Dec 2007 Field Determination. Date(s): SECTION II: SUMMARY OF FINDINGS A. RHA SECTION 10 DETERMINATION OF JURISDICTION. There Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: Site is along Arroyo Colorado, a navigable water. B. CWA SECTION 404 DETERMINATION OF JURISDICTION. There Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required] 1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): 1 TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.03 acres. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Pick List Elevation of established OHWM (if known): Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION I: BACKGROUND INFORMATION

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Arroyo Colorado.

Summarize rationale supporting determination: Site is along Arroyo Colorado, a navigable water.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List
Drainage area: Pick List
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 0.03 acres. ☐ Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS NHD data. USG sological Survey map(s). Cite scale & quad name: RIO HONDO, Texas. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): GLO, 2002. or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law:
	Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Site is along Arroyo Colorado, a navigable water.

APPROVED JURISDICTIONAL DETERMINATION FORM **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 Dec 2007

B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1003
С.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Arroyo City Center coordinates of site (lat/long in degree decimal format): Lat. 26.336° N, Long. 97.488° W. Universal Transverse Mercator: NAD83 Zone 14: 650,876E; 2,913,847N Name of nearest waterbody: Arroyo Colorado
	Name of nearest Traditional Navigable Water (TNW) Into which the aquatic resource flows: Arroyo Colorado Name of watershed or Hydrologic Unit Code (HUC): South Laguna Madre, 12110208 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☐ Office (Desk) Determination. Date: ☐ Field Determination. Date(s): 7 August 2007
SE(CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The	re Pick List "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required]
ievi	 Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: Arroyo COlorado is maintained as a commercial chanel for navigation to the Port of Harlingen.
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.1 acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain: .

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.
² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW

Identify TNW: Arroyo Colorado.

Summarize rationale supporting determination:

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/pollutants/poll
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 0.1 acres. ☐ Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
SUC	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SE	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 LA LEONA, Texas. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name:
	State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): GLO, 2002. or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 Dec 2007
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2007-1933
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: 120 Perch Lane State: Texas County/parish/borough: Aransas City: Rockport Center coordinates of site (lat/long in degree decimal format): Lat. 28.064° N, Long. 97.110° W. Universal Transverse Mercator: NAD83 Zone 14: 685,697E; 3,105,755N Name of nearest waterbody: Copano Bay Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Copano Bay Name of watershed or Hydrologic Unit Code (HUC): 12100405, Aransas Bay Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 20 Dec 2007 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
area	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	 b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 0.1 acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

SECTION I: BACKGROUND INFORMATION

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
 Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

TNW

Identify TNW: Copano Bay.

Summarize rationale supporting determination: Canal empties into Copano Bay.

Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW	(a)	ationship w	'1th	IN	W	:
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☐ Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting leaf litter disturbed or washed away sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list):
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

(iii)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: https://example.com/racteristics/pollutants, if known:
	(iii)	Biol	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: ☐ TNWs: linear feet width (ft), Or, 0.1 acres. ☐ Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres.
7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 ⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 ¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . Wetlands: acres.
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres.
SEC	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: 1:24000, ROCKPORT, Texas . USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: .
	State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): GLO, 2002. or ☐ Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: .